



U.S. Citizenship
and Immigration
Services

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FILE:

Office: TEXAS SERVICE CENTER

Date: FEB 06 2008

[SRC 01 258 54448]

consolidated]

INRE:

Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Texas Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be remanded.

The applicant is stated to be a **native** and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application after determining that the applicant had abandoned his application by failing to complete the process for providing a set of current fingerprints in support of his application.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reveals that the applicant filed his application on August 21, 2001. On April 19, 2004, the applicant was requested to appear for fingerprinting. The director concluded that the applicant had abandoned his application by failing to appear for fingerprinting and denied the application on September 23, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the director's decision on October 15, 2004, indicated that the director had erred in not mailing the fingerprint to the correct address and provided a statement in support of his claim.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, as the director's decision was based on abandonment, the AAO does not have jurisdiction over this case. Therefore, it will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the record contains the applicant's National Crime Information Center (NCIC) report dated April 14, 2004 that reflects the following offenses:

- (1) The applicant was arrested in Houston, Texas on June 4, 1995, for driving while intoxicated, 49.04 PC, a misdemeanor. He was convicted of that charge on July 21, 1995.
- (2) The applicant was arrested in Houston, Texas on December 9, 1996, for failure to stop and give information, 6701d(39)(2) VCS, a misdemeanor. He was convicted of that charge on December 12, 1996.
- (3) The applicant was arrested in Houston, Texas on January 21, 1999 for driving while his license was suspended, 6687b-(34)(a) VCS, a misdemeanor. He was convicted of that charge on January 25, 1999. The applicant (ii) on June 23, 1998, with driving under the influence, 23152(a) VC, a misdemeanor; and (iii) June 23, 1998, with disorderly conduct-prostitution, 647(b) PC, a misdemeanor.

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Final court dispositions for the above arrests are not included in the record of proceedings. Furthermore, the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. He has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a)(1).

In these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.