



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: MAR 03 2008

and [REDACTED] consolidated within]

[EAC 01 20851599]

INRE:

Applicant:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

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

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC) and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant is 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.

On June 13, 2003, the VSC Director determined that the applicant had abandoned his application after finding that the applicant had failed to respond to a Notice of Intent to Deny requesting that he establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. The director advised the applicant that, while the decision could not be appealed, he could file a motion to reopen within 30 days.

Counsel responded to the director's decision on August 12, 2003, stating that the applicant had changed his address but had not informed Citizenship and Immigration Services. Counsel submits an employment letter for consideration. It is noted that the applicant's response to the director's denial was received 60 days after the issuance of the director's decision.

In addition, an alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. *See* Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record reveals the following offenses:

1. On April 26, 1996, the applicant pled guilty and was convicted under the name [REDACTED] **for** driving without a valid license by a Judge of the District Court for the State of Alaska at Kodiak. (Case **number** [REDACTED])

2. The Federal Bureau of Investigation (FBI) fingerprint results report shows that on June 3, 1996, under the name [REDACTED], the applicant was arrested by the Kodiak Police Department in Alaska for reckless driving, leaving the scene of an accident, and driving while his license was revoked.

Fingerprint results report shows that on September 26, 2003, under the **name** [REDACTED] the applicant was arrested by the Sheriffs Office in Sterling, Virginia, for assault and battery on a family member.

4. The FBI fingerprint results report shows that on May 18, 2004, under the **name** [REDACTED] **he** applicant was arrested by the Sheriffs Office in Sterling, Virginia, for assault and battery on a family member.

The final court dispositions for the five arrests listed in Items #2, #3, and #4 above have not been provided for the record by the applicant.

The record also [REDACTED] was deported from the United States utilizing file number [REDACTED] under the name [REDACTED] on May 31, 2000, and for a second time under the name [REDACTED] on December 6, 2004.

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.

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.