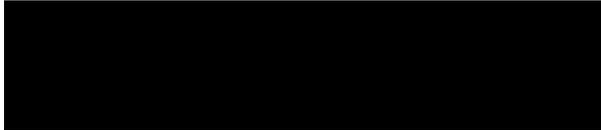




U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **JUL 25 2006**

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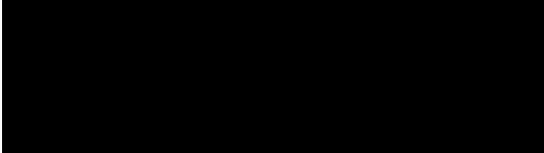
Applicant:



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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The matter 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.

The Federal Bureau of Investigation (FBI) fingerprint results report contained in the record of proceeding reveals that the applicant was arrested in Allentown, Pennsylvania, on February 11, 2001, and charged with: (1) driving under the influence of alcohol in violation of section 3731(a)(1) VC, a misdemeanor; (2) driving a vehicle after drinking sufficient alcohol such that the individual is incapable of safely driving in violation of 3731(a)(4) VC, a misdemeanor; (3) causing an accident involving death or personal injury in violation of 3742 VC, a misdemeanor; and (4) operating a motor vehicle without a valid driver's license in violation of section 1501 VC, a misdemeanor.

On April 2, 2003, the applicant was requested to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States. The applicant was also requested to submit the final court disposition of his arrest on February 11, 2001. The record does not contain a response from the applicant.

The director denied the application on June 12, 2003, after determining that the applicant had abandoned his application by failing to respond to a request for evidence. The director informed the applicant that there is no appeal from a denial due to abandonment, but that he could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On July 10, 2003, the applicant filed a motion to reopen the matter. On motion, counsel for the applicant stated that the applicant failed to respond to the Notice of Intent to Deny because he never received it. It is noted that the Notice of Intent to Deny was mailed to the applicant in care of counsel.

On August 20, 2004, the director reopened the matter and denied the application because the applicant failed to establish continuous physical presence in the United States since March 9, 2001. The director also denied the application because she found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant submits a statement and additional evidence.

There is no appeal from a denial due to abandonment. 8 C.F.R. 103.2(b)(15).

A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. 103.5(a)(6).

The director accepted the applicant's response to the director's latest decision as an appeal and forwarded the file to the AAO. However, in this case, the director denied the original application due to abandonment; since the

original decision was not appealable to the AAO, the AAO has no jurisdiction to consider the current appeal from the director's subsequent denial of the application on motion. Therefore, the case will be remanded and the director shall consider the applicant's response as a Motion to Reopen.

It is noted that the record of proceeding as it is presently constituted does not contain sufficient evidence to establish the applicant's continuous physical presence in the United States since March 9, 2001. It is further noted that the applicant, on appeal, provides a Lehigh County Sentence Sheet dated May 15, 2001, indicating that the applicant was convicted on the charge of driving without a valid driver's license as described in No. 4 above, a misdemeanor, and was sentenced to pay the costs of prosecution, a fine of \$200, and an EMS fine of \$10.

On appeal, counsel for the applicant submits documents from the Court of Common Pleas of Lehigh County, Pennsylvania, relating to (1), (2), and (3). The court documents indicate that, with regard to the charges of DUI/Incapable of safe driving, DUI/Alcohol 0.10% or greater, and causing an injury resulting in death or injury, the applicant was placed in the Accelerated Rehabilitative Disposition (ARD) DUI Fast Track Program for a period of twelve months. During the twelve-month period, the applicant was required to surrender his driver's license to the Clerk of Courts' Office, Criminal Division, forthwith and his driving privilege was suspended for a period of 120 days. He was also required to comply with all the rules regulations, and conditions of the Lehigh County Probation Department; to successfully complete the Alcohol Highway Safe Driving School and any counseling and/or treatment recommended by the Probation Officer; and, to pay court costs and restitution as determined by the Probation Department. In this case, it appears that there was no plea or finding of guilt on the part of the applicant. Counsel, on appeal, has provided a document from the Court of Common Pleas, Thirty-First Judicial District, Adult Probation Department, Lehigh County Alcohol Highway Safety Project, certifying that the applicant has successfully completed a 12 ½ hour course in instruction in the Effects of Alcohol, Drugs, and Driving on August 16, 2001; however, counsel has not provided a document establishing that the applicant successfully completed the ARD/DUI Fast Track Program and that his charges on Counts (1), (2), and (3) were dismissed. To date, the applicant has not provided the final court disposition of the charges detailed in Nos. 1 through 3 above.

As always 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.