



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**

MJ

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

DATE: JUN 29 2007

[SRC 01 212 55475]

IN RE:

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

Cindy M. Gomez for

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 (AAO) on appeal. The case will be remanded to the director for further 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 director denied the application on June 19, 2003, after determining that the applicant had been convicted of a felony or two or more misdemeanors committed in the United States.

The appeal was untimely. The appeal was received by the Texas Service Center (TSC) on November 12, 2003, more than the required 33 days. If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

The record shows that the Notice of Decision to Deny, dated June 19, 2003, was mailed to the applicant at [REDACTED]. The director's decision was returned to the TSC by the postal service on July 2, 2003, due to insufficient address. It is noted that the director failed to include the apartment number where the applicant resides (Apartment [REDACTED]). A second mailing of the decision was again returned to the TSC on July 16, 2003, because it was not deliverable as addressed (the applicant's address on the envelope was illegible). Therefore, the appeal will be treated as a motion, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2), and a decision will be made on the merits of the case.

On appeal, counsel asserts that the decision was made in error because the applicant never received notification of the director's decision by mail or any other means. She requests that the case be reopened. Counsel submits: (1) a copy of counsel's response to the September 23, 2003, letter from the Texas Service Center stating that the Forms I-765 and I-821 were denied on June 19, 2003. Counsel indicates that the applicant never received any correspondence regarding this decision or any requests for additional information required, although he has not moved from his current address since filing his application; (2) a letter from the applicant indicating that he never received any correspondence or notification regarding the denial of his TPS application; he listed his address as [REDACTED].

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. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, reflects the following:

- (1) On May 6, 1995, in Hatfield, Pennsylvania, the applicant, under the name of [REDACTED] was arrested for Charge 1, aggravated assault; Charge 2, simple assault; Charge 3, reckless endangering of another; Charge 4, terroristic threats; Charge 5, "possessing an instru of crime;" and Charge 6, disorderly conduct. The FBI report shows that the applicant was subsequently convicted of aggravated assault, a 2nd degree felony.

- (2) On October 2, 1995, in Allentown, Pennsylvania, the applicant, under the name of [REDACTED] was arrested for "false report of theft of auto," a misdemeanor. The FBI report shows that the applicant was subsequently convicted of this offense.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because he was convicted of a felony or two or more misdemeanors, detailed above.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the actual final court dispositions of the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI report. Nor is there evidence in the record that the applicant was provided the opportunity to submit the court dispositions of all of his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all of his arrests.

It is noted that the record of proceedings contain a Warrant of Deportation, Form I-205, issued on July 26, 1995, in Houston, Texas, based on a final order by an immigration judge, under file number [REDACTED] name used: [REDACTED]. The record also shows that the applicant [or some other individual sharing the same identity] was deported from the United States to El Salvador on May 9, 1997, under file number [REDACTED], name used: [REDACTED].

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.