



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 03 022 54382]

Office: CALIFORNIA SERVICE CENTER

Date: DEC 05 2005

IN RE: 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: SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) 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 director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

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 September 10, 2002.

The Federal Bureau of Investigation (FBI) Identification Record contained in the record reflects the following offenses:

1. On August 13 1993, the applicant was arrested in South Gate, California, and charged with possession of burglary tools, a misdemeanor.
2. On November 16, 1994, the applicant was arrested in Los Angeles, California, under the name [REDACTED] and charged with receiving known stolen property, a felony. Although the applicant has not provided the final court disposition of this arrest, the FBI report indicates that prosecution was declined in this case on November 18, 1994.
3. On January 30, 1996, the applicant was arrested in Los Angeles, California, under the name [REDACTED] and charged with possession or purchase of cocaine base for sale in violation of section 11351 H&S, a felony.
4. On November 30, 1996, the applicant was arrested in Norwalk, California, under the name [REDACTED] and charged with taking a vehicle without the owner's consent, a felony.
5. On February 6, 1997, the applicant was arrested by the Department of Corrections, Delano, California, on the charge of possession of cocaine base for sale.

On February 13, 2003, the applicant was requested to submit the final court disposition of the offenses detailed above. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on April 1, 2003.

The applicant responded to the Notice of Decision on April 30, 2003. The applicant states that he failed to respond to the Notice of Intent to Deny because he didn't receive the notice until after March 13, 2003, the deadline to respond to the notice. The applicant further states that his criminal record is due to "immaturity

and his lack of knowledge of the law.” The applicant asserts that after his first child was born, he became a “responsible and hard worker, who is doing his best to stay out of trouble and support his family.” The applicant submits copies of the final court dispositions of the arrests detailed in Nos. 1 and 3 above. On October 5, 1993, the applicant was convicted in the Municipal Court of Southeast - South Gate Judicial District, County of Los Angeles, State of California, of possession of burglary tools in violation of section 466 PC, a misdemeanor. (Case No. [REDACTED]) On March 27, 1996, the applicant pled guilty in the Superior Court of California, County of Los Angeles, to possession or purchase of cocaine base for sale in violation of section 11351 H&S, a felony. He was sentenced to serve 180 days in the county jail. (Case No. [REDACTED]).

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 has no jurisdiction over this case. Therefore, the matter will be remanded and the director shall consider the applicant’s response as a motion to reopen.

It is noted that the applicant still has not provided the final court dispositions of the arrests detailed Nos. 2, 4, and 5. Furthermore, the applicant did provide the final court disposition for the offense in No. 3 above; this document reveals that the applicant is ineligible for TPS under 8 C.F.R. § 244.4(a) as an alien who has been convicted of at least one felony.

The applicant is also inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act as an alien who has been convicted of any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). There is no waiver of this ground of inadmissibility. 8 C.F.R. § 244.3(c)(1). Therefore, the applicant is also ineligible for TPS for this reason.

Furthermore, the applicant, under penalty of perjury, fraudulently indicated on Part 4, Line 2.a., and d., of his application for TPS that he had not been convicted of a felony or two misdemeanors and that he had never been arrested. This misrepresentation of a material fact in an application for immigration benefits would also render the applicant inadmissible under section 212(a)(6)(C) of the Act.

It is noted that the applicant has a pending asylum application before Citizenship and Immigration Services as an American Baptist Church v. Thornburgh (ABC) class member.

It is further noted that the record contains a Form I-221, Order to Show Cause and Notice of Hearing, ordering the applicant to appear at the Office of the Immigration Judge, time and date to be determined, for a removal hearing.

Finally, it is noted that there is a discrepancy in the applicant’s dates of birth as they appear on various Salvadoran documents contained in the record of proceeding. The applicant indicated on his TPS application that he was born on May 25, 1973. He submitted a photocopy of a Salvadoran birth certificate with English translation reflecting a birth date of May 25, 1973. However, the applicant listed his date of birth on his asylum application as “May 25, 1970.” He submitted with his asylum application a photocopy of his Salvadoran national identity document (cedula), with English translation, and a photocopy of the biographic page of his Salvadoran passport, indicating that the applicant was born in El Salvador on May 25, 1970. The applicant has not provided any explanation for these discrepancies.

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 matter is remanded for further action consistent with the above and entry of a new decision.