



U.S. Citizenship  
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 08 2005

[WAC 03 040 52272]

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:



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*

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 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 after determining that the applicant had abandoned his application by failing to respond to his request to submit certified final court dispositions of all arrests in the United States.

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 24, 2002. On November 20, 2003, the applicant was requested to submit certified final court dispositions of all arrests in the United States. He was advised that the final court dispositions must be obtained from the court, not the police station. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on March 2, 2004.

The director advised the applicant to "refer to the enclosed Form M-188 relating to motions to reopen based on an abandonment denial." The applicant responded to the director's decision; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the case to the AAO. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. 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 Federal Bureau of Investigation (FBI) fingerprint results report shows that the applicant was arrested on March 31, 1996, at Los Banos, California, for "use/under influence controlled substance; carrying concealed firearm in vehicle;" and, "carrying loaded firearm in vehicle." The applicant failed to submit the court dispositions for the three charges listed.

It is also noted that the record reflects that the applicant withdrew his adjustment of status application on October 16, 2001, and that his application for TPS also does not satisfy the requirements for eligibility under the late registration provisions.

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.