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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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MJ



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 24 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.

Cindy M. Honey
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.

Failure to timely respond to a request for information without good cause will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information was not mailed to the applicant's most recent address. 8 C.F.R. § 244.9.

The record indicates that the applicant filed his Form I-821, Application for Temporary Protected Status, on November 22, 2002. On December 4, 2003, the applicant was requested to provide certified copies of the final dispositions of the following charges:

1. Date of Arrest: June 18, 1997
Law Enforcement Agency: Sheriff's Office, Norwalk, California
Charge: ASLT W/FIREARM ON PERSON - FELONY
2. Date of Arrest: June 25, 2000
Law Enforcement Agency: Sheriff's Office, Norwalk, California
Charge: DUI ALCOHOL/DRUGS - MISDEMEANOR
3. Date of Arrest: December 2, 2000
Law Enforcement Agency: Sheriff's Office, Norwalk, California
Charge: DUI ALCOHOL/DRUGS - MISDEMEANOR
4. Date of Arrest: April 13, 2002
Law Enforcement Agency: Sheriff's Office, Norwalk, California
Charge: DUI ALCOHOL/DRUGS WITH/PRIORS - MISDEMEANOR

The applicant was given until January 4, 2004, to respond to the notice. The applicant did respond to the Notice of Intent to Deny; however, he did not respond to the notice in a timely manner as required at 8 C.F.R. § 244.9. The applicant's response was not received at the California Service Center until January 29, 2004. It is noted that the record contains another Notice of Intent to Deny dated February 21, 2003, requesting evidence of identity and nationality and evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted documentation in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time frames.

In his response to the Notice of Intent to Deny dated December 4, 2003, the applicant provided court dispositions relating to his arrest on June 25, 2000, as well as the court dispositions of other charges not listed by the Director in the Notice of Intent to Deny. According to these court documents, the applicant has been convicted of the following misdemeanors:

1. Date of Arrest: November 20, 1999
Charge: 12500 (A) VC - UNLICENSED DRIVER - MISDEMEANOR
Convicted: June 27, 2000
2. Date of Arrest: June 25, 2000
Charge: 23152(B) VC - .08% MORE WEIGHT ALCOHOL DRIVE VEHICLE - MISDEMEANOR
Convicted: April 22, 2002 (It appears that this conviction relates to arrest number (2) detailed above.)
3. Date of Arrest: October 31, 2003
Charge: 12500(A) VC - UNLICENSED DRIVER - MISDEMEANOR
Convicted: December 17, 2003
4. Date of Arrest: November 22, 2003
Charge: 12500(A) VC - UNLICENSED DRIVER - MISDEMEANOR
Convicted: January 22, 2004

It is noted that the applicant has failed to provide certified court dispositions of the following charges as listed by the director in the Notice of Intent to Deny: June 18, 1997, ASLT W/FIREARM ON PERSON; December 2, 2002, DUI ALCOHOL/DRUGS; and, April 13, 2002, DUI ALCOHOL/DRUGS WITH PRIORS.

On February 5, 2004, the director denied the application. The director advised the applicant that he could file an appeal from this decision within 30 days. 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.

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.