

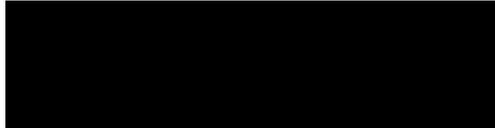
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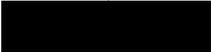
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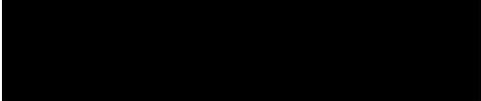
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JAN 25 2005

FILE: 

Office: CALIFORNIA SERVICE CENTER

Date:

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 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).

The record shows that the applicant filed Form I-821, Application for Temporary Protected Status, on March 27, 2001. On March 10, 2003, the applicant was requested to submit evidence to establish continuous physical presence in the United States since March 9, 2001, and a certified copy of the final court disposition of the following charges:

1. Date of arrest: December 19, 1998
Agency: Sheriff's Office, Redwood City, California
Charges: 1 count - DUI, ALCOHOL/DRUGS
1 count - DRIVE W/O LICENSE
2. Date of arrest: April 7, 1999
Agency: Sheriff's Office, Redwood City, California
Charge: 1 count - DUI ALCOHOL/DRUGS

On September 5, 2003, the director denied the application due to abandonment, because the applicant failed to provide all the evidence requested in the Notice of Intent to Deny. The director misquoted the regulation at 8 C.F.R. § 244.9(c) as follows:

If all requested evidence is not submitted within 30 days the application is consider[ed] deni[ied] due to [n]on-compliance.

The regulation at 8 C.F.R. § 244.9(c) states:

Failure to timely respond. 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. . . .

The applicant filed a timely motion to reopen the matter on September 19, 2003. On motion, the applicant states:

Your request for Court Dispositions I could not comply with because I have never been arrested by any police department, or law officer. I have never been indicted nor convicted of any crime here in the United States nor anywhere else in the world in any court of law.

The record reveals that the applicant did respond to the Notice of Intent to Deny on April 9, 2003. The applicant provided additional evidence in an attempt to establish continuous residence in the United States since February 13, 2001, and continual physical presence in the United States since March 9, 2001. However, the applicant failed to provide a certified copy of the final court disposition of his arrests on December 19, 1998, and April 7, 1999. The applicant's failure to provide all the evidence requested in the Notice of Intent to Deny cannot be considered to be the abandonment of the application under 8 C.F.R. § 103.2(b)(13) or 8 C.F.R. § 244.9(i). Rather, when evidence submitted in response to a request does not establish eligibility, the application shall be denied. 8 C.F.R. § 103.2(b)(12). Such a denial must explain in writing the specific reasons for denial and shall be appealable to the AAO. Accordingly, the matter will be remanded for action consistent with the foregoing.

It is noted that on motion, the applicant submits police clearance records from both Fairfield and Vallejo, California, but failed to submit proper court dispositions and evidence based on his two arrests in Redwood City, California.

As always, an alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act.

ORDER: The appeal is remanded for further consideration and action.