



U.S. Citizenship
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Services

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FILE: [REDACTED]
[SRC 99 177 50082]

Office: TEXAS SERVICE CENTER

Date: NOV 03 2005

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: 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
Robert P. Wiemann, Director
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 Honduras 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 the final court dispositions of each of the charges listed on the Federal Bureau of Investigation (FBI) fingerprint results report.

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 of proceeding contains the FBI report indicating that the applicant was arrested on February 4, 1991, in Tulsa, Oklahoma, for (1) possession of marijuana "with intent," (2) failure to have tax stamp, and (3) possession of cocaine "with intent." On August 8, 2002, the applicant was requested to provide police clearances from every city where he had lived for the past five years, and to provide the final court dispositions of all arrests including the charges listed in the FBI report. On November 29, 2002, the applicant was again requested to submit the court's final dispositions of the charges listed in the FBI report. The director advised the applicant that submitting merely a summary of the charges, furnished in response to his initial request, would not suffice. Because the applicant failed to respond to his second request, the director denied the application due to lack of prosecution on March 31, 2003.

The director advised the applicant that, while the decision could not be appealed, the applicant was not precluded from filing a new application or petition with a new fee. 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 file 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 record of proceeding contains the Criminal Action Docket of the District Court for Tulsa County, Oklahoma, pertaining to the applicant's arrest of February 4, 1991, indicating that on February 12, 1991, the "State declines to file. Bond exonerated." This docket was certified by the court on December 1, 1999. It is further noted that the applicant furnished a screen or computer printout, originated by the District Court for Tulsa County, Oklahoma, that was certified by the court on August 21, 2002, as a true, correct and full copy of the instrument as appears on the record of the court. The court's docket (page 2 of the printout) indicates that on February 12, 1991, the "State declines to file. Bond exonerated."

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 and entry of a decision.