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FILE:



[WAC 01 217 53400]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **OCT 27 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

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 appeal will be rejected.

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.

On appeal, the applicant states that the requested evidence was submitted within the time allowed, and that a police clearance was furnished as there was no record of a court disposition. The applicant requested that his TPS application be reopened on a humanitarian basis.

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).

On November 25, 2003, the applicant was requested to submit evidence to demonstrate that he had: (1) continuously resided in the United States since February 13, 2001; (2) been continuously physically present in the United States from March 9, 2001, to the date of filing his application; and (3) the final court dispositions of all arrests including arrests listed on the Federal Bureau of Investigation (FBI) fingerprint results report. The applicant was advised that a report from the Police Department would not be sufficient. The FBI report shows that the applicant was arrested in San Francisco, California, for "disorderly conduct/prostitution," on November 12, 1997, under the alias of [REDACTED]

The director noted that although the applicant responded by submitting evidence of his continuous residence and continuous physical presence, he failed to submit the final court dispositions of any and all arrests. Therefore, the director concluded that the applicant had abandoned his application and denied the application on March 2, 2004.

The record of proceeding, however, shows that the applicant did respond to the director's request for evidence. The response was received by the California Service Center on January 22, 2004, prior to the director's decision. Therefore, the director's finding that the applicant abandoned his application will be withdrawn.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director's decision of denial, dated March 2, 2004, clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before April 5, 2004. The appeal was received at the California Service Center on April 6, 2004.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

It is noted for the record that the applicant has not overcome the director's finding that the applicant had failed to submit the requested final court disposition relating to his criminal record. The applicant has provided a police clearance from the Police Department, City and County of San Francisco, California, indicating that a search of their records for [REDACTED] did not disclose any criminal record, and that the search was not verified by fingerprints or actual birth records. It is noted, however, that the applicant used an alias name, [REDACTED] at the time of his arrest. There is no evidence that a search was made under this name. Nor did the applicant submit the final disposition from the court where the hearing took place, as requested by the director.

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 appeal is rejected.