U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] [WAC 01 199 51522] Office: CALIFORNIA SERVICE CENTER Date: OCT 27 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.

Cindy M. Gomez for

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 record reveals the following offenses:

1. On December 3, 1999, the applicant was arrested in Mountain View, California, and charged with one count of hit and run with property damage in violation of section 20002(a) VC, a misdemeanor. (Agency Case Number

2. On January 25, 2000, the applicant was arrested in Mountain View, California, and charged with one count of hit and run with property damage in violation of section 20002(a) VC, a misdemeanor, and one count of driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. (Agency Case Numbe

The director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for police clearances and final court dispositions.

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 May 7, 2001. On March 13, 2003, the applicant was requested to submit police clearances from every city he has lived in since arriving in the United States and the final court disposition of any arrests since his arrival in the United States. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on December 15, 2003. The director erroneously advised the applicant that the decision could be appealed.

The applicant responded to the Notice of Decision on January 6, 2004. The applicant provided a police clearance letter from the City of Mountain View, California, indicating that no criminal record was found for ," date of birth January 2, 1980. It is noted that the arrests were made under the name of vever, and not He also provided the final court disposition of the charges detailed in No. (1) above. This disposition indicates that on April 26, 2000, the applicant was convicted in the Superior Court of California, County of Santa Clara, of driving without a valid driver's license, and also of hit and run with property damage, both misdemeanors. The applicant has not provided any documents indicating the final disposition of the charges detailed in No. (2) above.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, 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.

It is also noted that the record, as it is presently constituted, does not contain sufficient evidence to establish the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The record indicates that the applicant was apprehended at McAllen, Texas, by the United States Border Patrol on February 17, 1999, and placed into removal proceedings. The final disposition of these proceedings is not included in this record.

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.