



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 02 2007

[WAC 05 106 76640]

[WAC 01 168 50105]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. The case 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 indicates that the applicant filed a TPS application during the initial registration period on March 21, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 168 50105. The director denied that application on April 20, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on December 2, 2003. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 14, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on July 1, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On July 25, 2005, the applicant filed a motion to reopen his case [the motion was assigned receipt number WAC 05 210 50377]. He asserts that he did not receive the notice of decision denying his initial TPS application; therefore, he was not given the opportunity to file a motion to reopen. The applicant also filed Form I-290B, Notice of Appeal to the Administrative Appeals Office, received at the AAO on August 4, 2005, and stated that he was also sending a motion to reopen to CSC on the same date. The AAO forwarded the appeal to the CSC and was received on August 4, 2005 [the appeal was assigned receipt number WAC 05 219 51055]. The appeal remains pending.

A review of the record of proceeding indicates that the applicant listed his address on his initial application as [REDACTED]. He subsequently submitted a change of address on March 16, 2002. Forms I-765, Application for Employment Authorization, and Forms I-821, filed on November 19, 2002 and on July 22, 2003, listed the applicant's address as [REDACTED] Los Angeles, CA 90007. On November 7, 2003, a notification was mailed to the applicant advising him to appear for fingerprinting on December 2, 2003. That notice, including the director's denial decision dated April 20, 2004, were mailed to the applicant at his former address ([REDACTED]).

Accordingly, the director's finding that the applicant abandoned his initial application will be withdrawn. The record shows that the applicant subsequently was fingerprinted, and the Federal Bureau of Investigation fingerprint results report dated April 9, 2005, indicates the following:

- (1) On June 21, 1983, near San Ysidro, California, the applicant was arrested by the United States Border Patrol while attempting to enter the United States without inspection; he was placed in removal proceedings under the name of [REDACTED] file number [REDACTED]. That file was subsequently reviewed and it is noted that in removal proceedings held on May 29, 1986, the applicant failed to appear; therefore the Immigration Judge administratively closed removal proceedings without prejudice. On November 12, 1996, the applicant was requested to appear for an interview at the Los Angeles district office on November 25, 1996, to discuss his current immigration status. The applicant failed to appear.

- (2) On February 11, 1988, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested and charged with Count 1, force-assault with a deadly weapon not firearm-great bodily injury likely, 245(a)(1) PC; and Count 2, exhibiting a deadly weapon not firearm, 417(a)(1) PC. The final court disposition of this arrest is not included in the record of proceeding.
- (3) On November 11, 1988, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for "GIVE/TRANSPORT/ETC MARIJUANA OVER 28 & 5/10 GM." The final court disposition of this arrest is not included in the record of proceeding.
- (4) File [REDACTED] contains a CLETS (California Law Enforcement Teletype Service) printout dated January 16, 1997, indicating that the applicant (name used: [REDACTED]) was convicted: (a) on April 28, 1989, in California, of 23152(a) VC, driving under the influence (arrest date January 28, 1989, Docket No. [REDACTED]) (b) on April 25, 1999, in California, of 23152(a) VC, driving under the influence (arrest date March 24, 1989, Docket No. [REDACTED]). The actual final court dispositions of these charges are not contained in the record.

Since the applicant has overcome the sole ground for the denial of his initial application for TPS, that decision is withdrawn and the case is remanded to the director for further adjudication of the application, and to accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all of his arrests. The director also may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. The director's denial of the current application for re-registration/renewal is dependant upon the adjudication of the initial application; therefore, the current application will also be remanded to the director for further action.

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.