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FILE:



Office: California Service Center

Date:

MAR 26 2008

[WAC 01 168 55992]
[MSC 05 215 19345 – motion]
[LIN 07 082 52705 – motion]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again 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 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). 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 applicant filed his initial application for TPS on March 22, 2001. The director denied that application on December 15, 2003, because the applicant failed to provide the final court disposition regarding his past arrest.

On January 16, 2004, the applicant filed an appeal which was treated a motion to reopen by the Director, Nebraska Service Center (NSC). On August 18, 2004, the NSC director requested the applicant to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States. The NSC director determined that the record did not contain a response from the applicant, and therefore, denied the application again on October 14, 2004, due to abandonment. On April 21, 2005, counsel submitted a motion to reopen. It is further noted, that counsel submitted another motion to reopen [LIN 07 082 52705] on July 26, 2007.

There is no appeal from a denial due to abandonment. 8 C.F.R. § 103.2(b)(15).

A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. § 103.5(a)(6).

The director accepted the applicant's response to the director's decision as an appeal and forwarded the file to the AAO. However, since the original decision was not appealable to the AAO, the AAO has no jurisdiction to consider the current appeal from the director's denial. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is also noted that the record of proceedings contains a Federal Bureau of Investigation (FBI) transmittal reflects the following:

- (1) On November 21, 2000, the applicant was arrested by the Sherriff's Office, Norwalk, California and charged with "001 Counts of Rec Knwn Stolin Prop \$400 Plus." Agency Case number [REDACTED]



Page 3

The record does not contain the final court disposition for this arrest. Further, the FBI transmittal report reflects that the applicant has used an alternative date of birth as May 19, 1977.

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.