



U.S. Citizenship
and Immigration
Services

MI

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date:

AUG 15 2004

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 for
Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent identity unwarranted
invasion of personal privacy

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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 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 record reveals that the applicant filed his initial TPS application on April 16, 2001. On June 14, 2001, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence 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 Decision on November 19, 2001. The director advised the applicant that there is no appeal from this decision. The director's decision, however, failed to inform the applicant that he could file a motion to reopen within 30 days of the date of the decision.

The applicant responded to the Notice of Decision on October 9, 2003. The applicant requested that his TPS application be reopened and stated that he had not received the letter requesting additional information or the letter informing him that his application and employment authorization had been denied. The applicant also provided additional documentation in support of his claim. **It is noted that the applicant's response to the Notice of Decision was received almost two years after the issuance of the director's decision.**

It is further noted that the Request for Additional Evidence and the Notice of Decision were mailed to the address provided by the applicant on his Application for Temporary Protected Status. The applicant provided a new address on the application he submitted as a re-registration in November 2002; this, however, was one year after the director's denial had been issued. In support of his motion, the applicant also included a letter from the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), dated May 23, 2001, acknowledging receipt of his fingerprint fee, and another letter from CIS dated May 31, 2001, informing him of the appointment for fingerprinting. The applicant did not explain how he received these documents at the address he had provided, but did not receive the other notices mailed to the same address. It is also noted that the social security numbers and addresses differ on the applicant's 2001 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, and the 2001 IRS Form 1099-MISC, submitted on motion.

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 case will be remanded and the director shall consider the applicant's response as a motion to reopen.

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.