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U.S. Citizenship
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Services

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4 2004

FILE:

Office: TEXAS SERVICE CENTER Date:

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.

Cindy M. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

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 March 30, 2001. On April 22, 2002, the applicant was requested to submit additional evidence establishing his date of entry into the United States and his qualifying continuous physical presence in the United States. In a second Notice of Intent to Deny, dated July 26, 2002, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States; it is noted that this notice listed the applicant's new address, but was mailed to his previous address. The record does not contain a response from the applicant to either request; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Decision to Deny and Revoke on August 22, 2002. The director advised the applicant that the decision could not be appealed, but that denial due to abandonment does not preclude the filing of a new petition or application with a new fee, pursuant to 8 C.F.R. 1944 103.2(b)(15).

The applicant responded to the director's Notice of Decision on October 17, 2003. The applicant requested that his TPS application be accepted and that he be given the "opportunity to continue being legal in this country in which with a lot of difficulty [he has] lived here without having the opportunity of being employed and also given the chance to pay [his] taxes." The applicant did not provide any additional documentation in support of his claim. It is noted that the applicant indicated he was appealing a decision dated "Sep 22, 2003," but the record, as currently constituted, does not contain a decision of that date. **It is noted that the applicant's response to the Notice of Decision was received more than one year after the issuance of the director's decision.**

The director accepted the applicant's response as an appeal 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.