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U.S. Citizenship
and Immigration
Services

MI

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: **DEC 05 2005**

[EAC 02 287 51943]

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:

[REDACTED]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The director subsequently dismissed a motion to reopen the case. The case is now before the Administrative Appeals Office (AAO) on appeal and will be remanded for further consideration and action.

The applicant claims to be 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.

On May 16, 2003, the director denied the application due to abandonment because the applicant failed to appear to be fingerprinted or request another appointment to be fingerprinted. The director informed the applicant that there is no appeal from a denial due to abandonment, but that he could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On June 17, 2003, counsel for the applicant filed a motion to reopen the case. Counsel stated that the applicant didn't receive the fingerprint appointment notice.

The director subsequently reopened the matter and provided the applicant with another opportunity to be fingerprinted. The applicant appeared for his fingerprint appointment as scheduled.

The director denied the application on August 19, 2004, because she found that the applicant had failed to submit requested court documentation relating to his criminal record. The director also denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

Counsel for the applicant filed an appeal on September 16, 2004. On appeal, counsel asserts that the director factually and legally erred in denying the application. Counsel further asserts that the applicant is prima facie eligible for TPS. Counsel submits documents from the District Court of Suffolk County, Traffic Division, Central Islip, New York, and a document from the State of New York Department of Motor Vehicles, Albany, New York.

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 latest decision as an appeal and forwarded the file to the AAO. However, in this case, the director denied the original application due to abandonment; 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 of the subsequent Motion to Reopen. 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.