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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

ML

FILE:

[REDACTED]
[EAC 01 202 56266]

Office: VERMONT SERVICE CENTER

Date: DEC 15 2005

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was initially denied due to abandonment by the Director, Vermont Service Center. The service center director granted the applicant's motion to reopen the case, and subsequently denied the application for cause. The case is now before the Administrative Appeals Office (AAO) on appeal, and 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.

On April 24, 2003, the director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence. 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 May 23, 2003, the applicant filed a motion to reopen the case. The applicant submitted a timely motion to reopen with additional evidence, consisting of Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, from two companies for the year 2002; an English translation of a birth certificate, without a copy of the original in the Spanish language; and, a letter from [REDACTED] Union City, New Jersey, stating that the applicant worked for him "as a cleaning person since August 1999." The director granted the motion to reopen.

On March 5, 2004, the applicant was requested to submit additional evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

In response, the applicant submitted photocopies of the following documentation: a notarized letter dated March 31, 2004, from [REDACTED] Union City, New Jersey, certifying under penalty of perjury, that the applicant had resided at his building, [REDACTED] "since August 1999;" and, an undated notarized letter from [REDACTED] certifying under penalty of perjury that he has known the applicant since December 1999, that the applicant helped with cleaning and maintenance at a property located at [REDACTED] New Jersey, and that the applicant began working for [REDACTED] in 2002.

The record also includes photocopies of the biographic pages of the applicant's El Salvadoran passport issued on September 17, 2001, by the Consulate General, New York, New York; and, his employment authorization document (EAD) valid under Category C19.

The director determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and, therefore, denied the application on July 26, 2004. The director noted that the submitted evidence was insufficient in the absence of supporting documentary evidence.

The applicant filed an appeal on August 27, 2004. On appeal, the applicant submits additional documentation consisting of: a lease document signed by the applicant, a witness, and the landlord, [REDACTED] for the property located at [REDACTED] for the period of December 1, 1999 through November 30, 2000; and, a letter dated August 19, 2004, from [REDACTED], West New York, New Jersey, verifying that the applicant has been a client and utilized the services of the company in November of 2000, January, March, May, June and November of 2001, and January and February of 2002.

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.