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U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 02 007 51379]

Office: VERMONT SERVICE CENTER

Date: DEC 15 2005

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, Director
Administrative Appeals Office

DISCUSSION: The application was initially denied due to abandonment by the Director, Vermont Service Center. Through counsel, the applicant filed a motion to reopen. The service center director granted the motion to reopen and subsequently denied the TPS application for cause. The matter 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.

With his initial application, the applicant submitted photocopies of: a partial El Salvadoran birth certificate, with English translation; and, the sworn affidavit dated September 6, 2001, of [REDACTED] of Hyattsville, Maryland, attesting that the applicant left El Salvador in December of 2000, and lived in his house since January 2, 2001.

On May 5, 2003, the director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence dated February 11, 2003. 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.

The applicant attempted to submit TPS applications marked as applications for re-registration and extension of his employment authorization. Following the return of these applications with a form letter indicating that his TPS application had been denied, the applicant, through counsel, filed a motion to reopen the case on January 30, 2004. Counsel stated that the motion was late for reasons beyond the applicant's control, and submitted additional evidence, consisting of: detailed medical records dated in 2002; his Maryland Learner's Permit issued on July 19, 2003; copies of his employment authorization document (EAD) valid under Category C19; copies of money orders payable to CIS and of his returned TPS applications; the applicant's sworn statement; a sworn affidavit from [REDACTED] attesting that she is the sister of the applicant, and that he resided with her in Hyattsville, Maryland, "since he came to the United States;" a copy of the Permanent Resident Card of [REDACTED]; a letter from the President of [REDACTED], Middle River, Maryland, stating that the applicant was hired by the company on November 8, 2001; pay statements from [REDACTED] Middle River, Maryland, dated between December 2001 and 2003; and, the applicant's Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, and IRS Form W-2, Wage and Tax Statement, for the year 2002. The record also includes another notarized letter from [REDACTED] dated May 12, 2003, attesting to the character of the applicant and his residence in the United States since January 2001.

The director granted the motion to reopen, and after reviewing the entirety of the record, determined that the applicant had failed to establish his qualifying continuous residence in the United States since February 13, 2001. Therefore, the director denied the application on April 22, 2004.

Counsel for the applicant filed an appeal on May 6, 2004. Counsel submits a statement.

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.