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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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JUN 06 2005

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 02 276 30178]

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.

Cindyn. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter 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 properly filed his application on November 20, 2002.¹ On December 17, 2003, the applicant was requested to submit evidence to establish his eligibility for late initial registration. 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 Denial on March 9, 2004. The director erroneously advised the applicant that he could file an appeal with the AAO within 33 days of the mailing date of the Notice of Decision.

The applicant responded to the Notice of Decision on March 31, 2004. The applicant states that he cannot provide much evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time frames because he was in unlawful status and could not get a Social Security card or work legally during that period. He submits additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence. The applicant did not submit any evidence to establish his eligibility for late initial registration.

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

It is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time frames. The record also does not contain a photo identification document.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

¹ It is noted that the applicant attempted to file his TPS application during the initial registration period; however, the application was rejected and returned to the applicant on September 11, 2002, for his failure to sign the application.



ORDER: The matter is remanded for further action consistent with the above and entry of a new decision.