



U.S. Citizenship  
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Services

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[REDACTED]

MAY 02 2005

FILE: [REDACTED]  
[EAC 02 246 50754]

Office: VERMONT SERVICE CENTER

Date:

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.

*Cindy N. Gomez* for  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont 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 filed his application on July 19, 2002. On February 26, 2003, the applicant was requested to submit additional evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. 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 April 24, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen no later than May 27, 2003.

The applicant responded to the Notice of Decision on May 12, 2003. The applicant asserts that he never received the Notice of Intent to Deny dated February 26, 2003, even though he had reported his change of address to Citizenship and Immigration Services (CIS). The applicant also provided an affidavit dated May 6, 2003, from [REDACTED] who identifies herself as the applicant's landlord, stating that the applicant rented a room from her from December 2000 to October 2002.

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 contains a Form G-28, Notice of Entry of Appearance of Attorney or Representative, filed with the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU). As the entity claiming to be the applicant's representative, [REDACTED] Immigration Consultants, is not recognized as authorized to represent aliens in proceedings before Citizenship and Immigration Services (CIS), the decision will be provided only to the applicant.

It is further noted that the record of proceeding, as it is presently constituted, does not contain evidence of identity, nor does it contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time frames.

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