



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: NOV 21 2005

[EAC 02 005 50768]

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.

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 case will be remanded to the director for further 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 not overcome the basis for the original denial of his TPS application.

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).

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).

The record shows that the applicant filed his initial application on September 6, 2001. On November 21, 2002, the applicant was requested to submit evidence to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing his application. 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 decision on July 11, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

On July 31, 2003, the applicant filed a motion to reopen his application. The director granted the motion, and after a complete review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome and again denied the application on March 17, 2004.

On March 31, 2004, the applicant appealed the director's decision to deny the application. The director accepted the applicant's appeal and forwarded the file to the AAO. However, as the initial decision by the director was based on abandonment, the AAO has no jurisdiction over an appeal based on a decision made as a result of a motion. Therefore, the case will be remanded to the director.

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.