



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: NOV 21 2005
[EAC 02 112 51005]

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 "Robert P. Wiemann".

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 abandoned his application by failing to appear for a scheduled appointment for fingerprinting.

If an individual requested to appear for fingerprinting or for an interview does not appear, Citizenship and Immigration Service (CIS) does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 February 7, 2002. On March 8, 2002, the applicant was requested to appear for fingerprinting at the CIS office in Boston, Massachusetts, on April 19, 2002. The applicant failed to appear as required. Therefore, the director concluded that the applicant had abandoned his application and denied the application on May 29 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.

The applicant responded by filing a motion to reopen his case on August 20, 2003. The applicant stated that he never received the appointment letter. The record does not contain evidence that the director addressed the applicant's motion. Subsequently, on May 12, 2004, a notice of intent to deny was issued requesting that the applicant submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The director denied the application on August 3, 2004, because the evidence furnished, in response, was insufficient to establish continuous residence and continuous physical presence during the requisite period.

The director accepted the applicant's 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 appeal from the director's denial. Therefore, the case will be remanded, and the director shall address the motion to reopen filed on April 20, 2003.

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.