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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MI



FILE:



[EAC 03 086 53108]

Office: Vermont Service Center

Date: SEP 26 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: 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 for further consideration and action.

The applicant is stated to be 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 initial application on January 21, 2003. On March 17, 2003, the applicant was requested to submit additional evidence establishing his qualifying residence and physical presence in the United States. The applicant was also requested to submit evidence establishing his eligibility for late registration. On April 21, 2003, the applicant responded to the director's March 17, 2003 request and submitted some evidence in an attempt to establish his eligibility for TPS.

The director denied the application due to abandonment on June 23, 2003, and noted that the record did not include a response to her March 17, 2003 request. However, a review of the record of proceedings reflects that the applicant had responded to the director's request on April 21, 2003, before the director's decision to deny his application on June 23, 2003. As such, it appears the director erred in her conclusion and did not include the applicant's response in the decision.

On July 21, 2003, the applicant filed a subsequent motion to reopen from the director's decision. The director denied this motion on March 3, 2004, and stated that the evidence submitted by the applicant failed to address his eligibility for TPS late registration.

On April 2, 2004, the applicant submitted an appeal now before the AAO. On appeal, the applicant stated that he has complied with all the requests of the Service and that he cannot return to his country because he needs the work for his family. The applicant does not provide any evidence in support of his eligibility for TPS along with his appeal. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

It also is noted that the record contains insufficient evidence to establish that the applicant is a national or citizen of El Salvador. The applicant provided copies of his birth certificate along with an English translation as evidence of his identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide photo identification.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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.