



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

Date:

AUG 01 2006

[EAC 01 227 58997]

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The Director (now Chief) of the Administrative Appeals Office (AAO) dismissed a subsequent appeal from the denial decision. The service center director subsequently dismissed a motion to reopen the case. The case is now before the Administrative Appeals Office (AAO) on a second motion to reopen. 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 service center director denied the application on April 7, 2003, because the applicant failed to establish continuous residence in the United States since February 13, 2001.

On April 12, 2003, the applicant filed an appeal from the denial decision. The director of the AAO dismissed the appeal on May 24, 2004, finding that the applicant had not submitted sufficient evidence to overcome the ground for denial of the application. The director also determined that the applicant had not established continuous physical presence in the United States during the requisite periods.

On October 4, 2004, the applicant filed a motion to reopen the case. The service center director dismissed the motion on January 20, 2005 as untimely filed.

On February 3, 2005, counsel for the applicant filed a second motion to reopen the matter.

Pursuant to 8 C.F.R. § 103.5(a)(1), (ii), the official having jurisdiction is the official who made the latest decision in the proceeding.

In this case, the service center director dismissed the applicant's prior motion to reopen on January 20, 2005. The director forwarded the applicant's current motion to reopen to the AAO. However, since the director dismissed the applicant's prior motion to reopen on January 20, 2005, the AAO has no jurisdiction to consider the current motion to reopen. Therefore, the case will be remanded and the director shall consider the applicant's current motion to reopen.

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.