

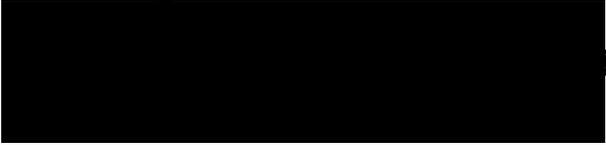
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U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

Date: **JAN 06 2006**

[EAC 01 188 54633]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The director dismissed a motion to reopen the case. The director subsequently reopened the case, and denied the application again. The case is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant claims 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.

On May 30, 2003, the director denied the application due to abandonment because the applicant failed to respond to a request for evidence dated February 25, 2003. The director informed the applicant that there is no appeal from a denial due to abandonment, but that he could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On June 20, 2003, the applicant filed a motion to reopen the case. The applicant stated that he had lived at [REDACTED] since February 15, 2001, but had never received any notices from Citizenship and Immigration Services (CIS) regarding his TPS application.

On September 3, 2003, the director dismissed the motion because it did not meet the requirements of a motion to reopen as set forth in 8 C.F.R. § 103.5(a)(4).

On April 9, 2004, the applicant filed a second motion to reopen the case.

On June 18, 2004, the director granted the motion to reopen. The director found that the applicant had submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States, but denied the application because the applicant failed to establish his identity and nationality.

The applicant filed an appeal on July 12, 2004. On appeal, the applicant submits a photocopy of his Salvadoran birth certificate with English translation and evidence relating to his residence and physical presence in the United States. However, the applicant has not submitted an official photo identification document to establish his identity.

There is no appeal from a denial due to abandonment. 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)(6).

The director accepted the applicant's response to the director's latest decision as an 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 current appeal from the director's denial of the subsequent Motion to Reopen. Therefore, the case will be remanded and the director shall consider the applicant's response as a 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.