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U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: OCT 30 2006

[EAC 02 237 52269]

IN RE:

Applicant:



APPLICATION:

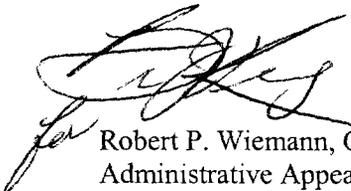
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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.


Robert P. Wiemann, Chief
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 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.

The director denied the application after determining that the applicant had not overcome the basis for the original denial of his TPS application.

A Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted; however, 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.

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 application on July 1, 2002. In a notice of intent to deny dated March 3, 2003, the applicant was requested to submit evidence to establish 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 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 May 7, 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 June 10, 2003, the applicant filed a motion to reopen his case, and submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite period.

On September 18, 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)(2).

On February 3, 2005, the applicant appealed the director's decision, and submitted additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

Because the appeal was filed later than the prescribed period of 33 days, the director rejected the appeal and accepted it as a Motion to Reopen. After a complete review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome; therefore, he affirmed his previous decision and denied the application on March 21, 2005.

The applicant filed an appeal on April 6, 2005. He submits additional evidence including evidence previously furnished and contained in the record.

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.