



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 31 2006

[EAC 02 201 52640]

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, reopened, and denied again by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The matter will be remanded.

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 on June 2, 2003, after determining that the applicant had abandoned her application by failing to respond to the request for evidence. The director informed the applicant that there is no appeal from a denial due to abandonment, but that she could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On August 22, 2003, the applicant filed a motion to reopen the case. On motion, the applicant submitted affidavits from her husband and brother-in-law in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On September 10, 2004, the director reopened the case and provided the applicant with another opportunity to submit additional evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, submitted a letter from [REDACTED] stating that the applicant used to baby-sit her children.

The director denied the application again on November 23, 2004, because she found the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant repeats her claim to have lived in the United States since January 27, 2000. She explains that she relied on her husband for financial support until she received employment authorization after she filed her TPS application. 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.

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.

It is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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.