U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: Baltimore District Office Date: SEP 1 5 2006
[EAC 01 200 52296]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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.

Cindy N. Gomez for

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 motion. The motion will be dismissed.

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 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 application on May 14, 2001. On March 27, 2002, the applicant was requested to submit additional evidence establishing his qualifying continuous residence in the United States since February 13, 2001. The applicant replied to the director's request on April 24, 2002; however, the applicant did not submit sufficient evidence to establish his qualifying continuous residence in the United States. Subsequently, on September 5, 2002, the applicant again was requested to submit evidence to establish his continuous residence in the United States since February 13, 2001. The record does not contain a response to this request for additional evidence; therefore, the director concluded that the applicant had abandoned his application and denied the application on June 16, 2003.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen. Counsel, on behalf of the applicant, responded to the director's decision and sent the motion to the Baltimore District office.

The Form I-290B, Notice of Appeal, and the Service regulations are very clear in indicating that any appeal or motion is to be sent to the "office which made the unfavorable decision." 8 C.F.R. § 103.3(a)(2)(i). Counsel, nevertheless, sent the motion to the Baltimore District office. The motion is not considered properly filed until it is received by the Service Center that rendered the unfavorable decision. The motion should have been filed with the Vermont Service Center (VSC). Further, as the VSC director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the motion will be dismissed.

However, in the director's discretion, he may reopen the decision on a Service motion pursuant to 8 C.F.R. § 103.5(a)(5), or excuse the late filing of a new motion under the requirements of 8 C.F.R. § 103.5(a)(1)(i).

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 motion is dismissed.