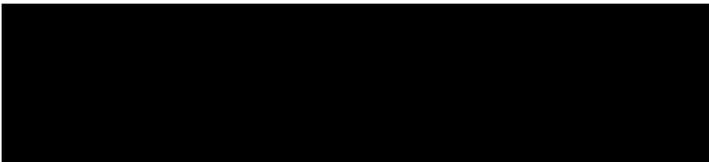


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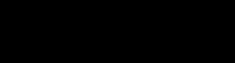
U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: APR 11 2007

[EAC 02 031 51120]
[EAC 04 143 50818 – Motion]

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.

Cindy N. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office *per*

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

The applicant is a 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 April 25, 2003, the director denied the application due to abandonment because the applicant failed to respond to a request for evidence in support of her application. 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 decision.

On July 21, 2003, the applicant filed a motion to reopen the case (EAC 03 220 50976 relates).

On March 15, 2004, the director reopened the matter and reaffirmed her previous decision. The director erroneously advised the applicant that she could file an appeal from that decision.

The applicant filed the current appeal on April 12, 2004.

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).

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 dismissal of the subsequent motion to reopen. Therefore, the case will be remanded and the director shall consider the applicant's appeal as a motion to reopen.

It is noted that the applicant has failed to submit sufficient evidence to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c).

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 consideration and action consistent with the above.