



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: APR 20 2007

[EAC 01 207 51354]

[EAC 04 171 52686 – Motion]

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:

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

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). The director subsequently dismissed one motion to reopen the case and reopened the application on another motion, but reaffirmed his decision to deny the application. 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.

The application filed an initial Form I-821, Application for Temporary Protected Status, on June 7, 2001. 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 20, 2003, in support of his application. 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 decision.

The applicant filed a motion to reopen the case on June 26, 2003 (EAC 03 201 50510 relates). The motion was dismissed on December 8, 2003. The applicant filed a second motion on January 7, 2004 (EAC 04 066 53159 relates). The director reopened the matter and reaffirmed her previous decision to deny the application on April 26, 2004. In her decision, the director erroneously advised the applicant that he could file an appeal from that decision.

The applicant filed the current appeal from the director's latest decision on May 17, 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 a 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 consideration and action consistent with the above.