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U.S. Citizenship
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DEC 03 2007

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

[EAC 01 198 54616]

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.

*John H. Vaughan
for*

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). The director subsequently dismissed two motions to reopen the case and affirmed the 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.

On May 22, 2002, the director denied the application due to abandonment because the applicant failed to respond to a request, dated December 4, 2001, for evidence in support of his application.¹ 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 an untimely motion to reopen on September 24, 2002. The VSC director dismissed the motion on May 30, 2003.

The applicant filed a second untimely motion to reopen on November 23, 2004. The VSC director accepted the motion, but affirmed the decision to deny the application on January 21, 2005, stating that the grounds for denial of the application (i.e., due to abandonment for failure to provide requested evidence) had not been overcome. The director erroneously advised the applicant that he could appeal the decision, which the applicant did on February 19, 2005.

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 decision to affirm the denial of the application due to abandonment for failure to respond to a request for evidence. Therefore, the case will be remanded and the director shall consider the applicant's filing on February 19, 2005, 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.

¹ The request advised the applicant to submit the final court dispositions of all charges against him, including the specific identification (not just numeric citations and codes) and classification (i.e. felony or misdemeanor) of those charge(s).