



U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 06 2007

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IN RE:

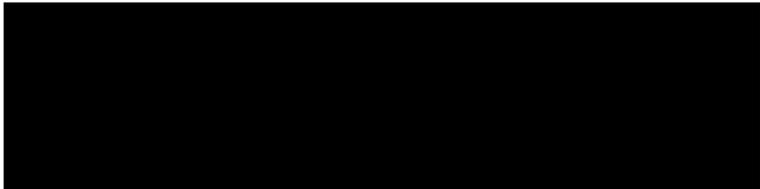
Applicant:



APPLICATION:

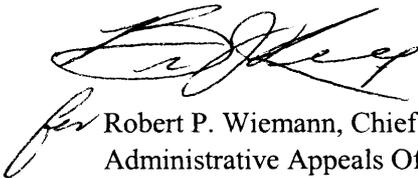
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A motion to reopen, filed by the applicant, was granted by the director, and he again denied the application. The applicant filed a subsequent motion to reopen that was also denied by the director. The applicant appealed the director's decision on the motion, and it is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States on April 17, 2000 without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, for failure to respond to a request for evidence to establish his eligibility for TPS.

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 August 2, 2001. On April 30, 2002, the applicant was requested to appear to be fingerprinted. The applicant failed to appear for fingerprinting; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on March 25, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen.

In compliance with the director's instructions, the applicant submitted a motion to reopen his case. On May 23, 2003, the applicant submitted a motion to reopen. The applicant requested that his TPS application be reopened. According to the applicant, he was not sent a written notice to appear to have his fingerprints taken.

The director accepted the motion and determined that the motion was submitted subsequent to the required 33 days and dismissed the motion.

On April 15, 2004, the applicant submitted a subsequent motion to reopen his case. The applicant stated that he wanted to reopen his case because he wanted to stay in the United States and work.

On June 25, 2004, the director accepted the motion and determined that the motion was submitted subsequent to the required 33 days and dismissed the motion.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director's decision of denial, dated June 25, 2004, clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before July 28, 2004. The appeal was received at the Vermont Service Center on March 7, 2005.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

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 appeal is rejected.