

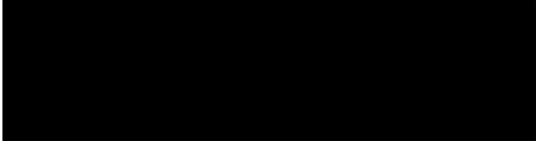
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Services

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FILE:



OFFICE: California Service Center

DATE:

JUN 04 2007

[WAC 01 290 57469 –
as it relates to
WAC 05 158 72549]

IN RE:

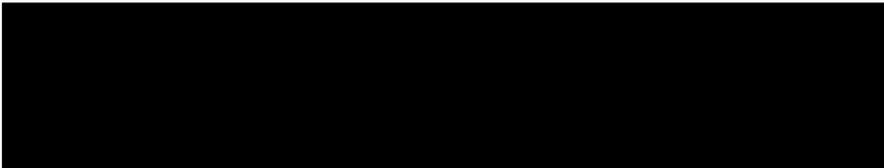
Applicant:



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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center (CSC). It is now before the Administrative Appeals Office (AAO) on a motion to reopen. The case will be remanded to the director 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 director denied the initial application on the ground of abandonment after the applicant failed to respond to a request for evidence.

The record shows that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on September 6, 2001. The director issued a notice of intent to deny (NOID) on March 17, 2004, giving the applicant 30 days to provide evidence of the final court dispositions of any and all arrests in the United States, as well as evidence of his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The 30-day response period expired with no response from the applicant. On May 4, 2004, therefore, the director denied the TPS application on the ground of abandonment, in accordance with the regulation at 8 C.F.R. § 244.9(c).

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 official who denied the application – in this case, the Director, CSC – may treat the applicant's appeal as a motion for the purpose of granting the motion. *See* 8 C.F.R. § 103.5(a)(8).

The applicant filed a Form I-290B, Notice of Appeal to the AA[O], on June 8, 2004,¹ and subsequently submitted some additional documentation.

The director erroneously accepted the applicant's Form I-290-B and accompanying document as an appeal instead of a motion to reopen and forwarded the file to the AAO. The director's error does not, and cannot, supersede the regulation. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

On February 7, 2005, the applicant filed a second Form I-821, identifying it as an application for re-registration of TPS. On September 16, 2005, the Director, CSC, denied the re-registration application on the ground that the applicant's initial TPS application was denied, making him ineligible to re-register for TPS under section 244 of the Act. That decision should not have been issued, however, since there was a pending motion to reopen the initial TPS application. The decision on the application for re-registration is dependent upon the final decision on the initial application. The denial of the re-registration application will be withdrawn, therefore, and a new decision on that application shall be issued by the director after the motion to reopen the initial application is resolved and the adjudication of that application is complete.

¹ The AAO notes that the Form I-290B was filed at the California Service Center 35 days after the decision was issued, which was not within the 33 days prescribed in the regulations. *See* 8 C.F.R. § 103.5(a)(1)(i) and 8 C.F.R. § 103.5a(b).

As always in these proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consideration and action consistent with the above.