



U.S. Citizenship
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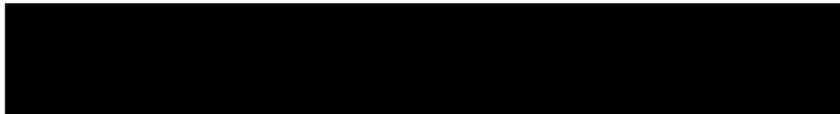
OFFICE: California Service Center

DATE: JUN 14 2007

[WAC 03 247 51193]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 motion 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 application on the ground of abandonment after the applicant failed to respond to a request for evidence.

As provided in 8 C.F.R. § 103.2(b)(13): "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." A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. *See* 8 C.F.R. § 103.2(b)(15).

The record shows that the applicant filed his Form I-821, Application for Temporary Protected Status, on July 29, 2003. On December 19, 2003, the director issued a Notice of Intent to Deny (NOID) in which the applicant was requested to submit evidence establishing his eligibility for late registration, his physical presence in the United States from March 9, 2001, to the date his TPS application was filed, as well as his nationality and identity. The applicant was advised to submit the requested evidence within 30 days. After the applicant failed to respond to the NOID, the director issued a Notice of Decision on February 28, 2004, denying the application on the ground of abandonment. In the decision the director advised the applicant that he could file an appeal within 33 days.

The applicant responded to the director's decision by filing a timely Form I-290B with the CSC, accompanied by photocopies of his El Salvadoran birth certificate and his immunization record.

The director erroneously treated the applicant's filing as an appeal instead of a motion to reopen and forwarded the file to the AAO. Since the denial of the application was based on abandonment, however, the AAO has no jurisdiction over the case. Accordingly, the case will be remanded to the director for consideration of the pending motion.¹

¹ The AAO notes that the applicant's Form I-821 was filed at the CSC on July 29, 2003, which was nearly a year after the close, on September 9, 2002, of the initial registration period for TPS applicants from El Salvador. The applicant implies that he qualifies for late TPS registration because his mother, [REDACTED], was granted Temporary Protected Status. The records of Citizenship and Immigration Services (CIS), however, do not indicate that the applicant's mother has ever been granted TPS. The file of [REDACTED] shows that she filed TPS applications during the initial application period for El Salvadoran nationals in June 2001 and February 2002, but that they were denied by the Director, CSC, on December 15, 2003, after she failed to provide the final court disposition of an arrest by the Los Angeles Police Department for petty theft on February 2, 2003. A subsequent motion to reopen or reconsider was dismissed on May 14, 2004, by the Director, CSC, on the ground that it was not filed within the required time period. The AAO also notes that the applicant's mother did not list the applicant, or any other children, in the TPS applications she filed in 2001 and 2002.

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 consistent with the above.