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U.S. Citizenship
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FILE:

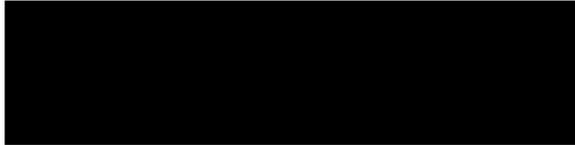
[EAC 01 227 58997]

Office: VERMONT SERVICE CENTER

Date: NOV 09 2007

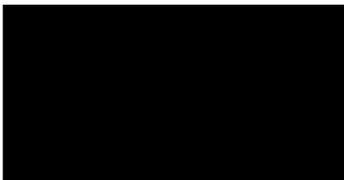
IN RE:

Applicant:



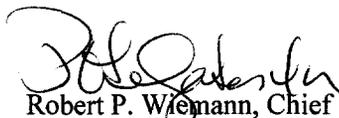
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the motion will be dismissed.

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 record reveals that the applicant filed a first TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number EAC 01 227 58997. The Director, Vermont Service Center (VSC), denied that application on April 2, 2003, because the applicant failed to establish that he had continuously resided in the United States since February 13, 2001. Counsel filed an appeal from the denial decision on April 12, 2003. The AAO dismissed the appeal on May 24, 2004, and the director's decision to deny the application was affirmed.

Counsel filed a motion to reopen the application on October 4, 2004, and submitted statements from individuals claiming to be his employer and friend stating that the applicant had been present in the United States during the time period required by the regulations. The VSC director dismissed the motion on January 20, 2005, because it was not filed timely and the delay was not found reasonable.

On February 3, 2005, counsel filed a motion to reconsider the dismissal of the motion to reopen. The director forwarded the case to the AAO, which then remanded it to the director due to lack of jurisdiction since the director made the latest decision in the proceeding, and therefore had jurisdiction of the case. There is no indication in the record of proceedings that the director issued a decision on the second motion after the case was remanded by the AAO.

The VSC director's decision on January 20, 2005, to dismiss the first motion to reopen is in error because he did not have jurisdiction over the case since the Chief, AAO was the official who made the latest decision in the proceeding. Therefore, the VSC director should have forwarded the motion to the AAO.

The initial application will be reopened, *sua sponte*, by the Chief, AAO, and the current motion will be reviewed.

On February 3, 2005, counsel filed the current motion to reconsider the dismissal of the first motion to reopen and submits additional documents. The VSC director forwarded the case to the AAO, which then remanded it to the director due to lack of jurisdiction since the director made the latest decision in the proceeding, and therefore had jurisdiction of the case. The VSC director however, failed to take any action.

On motion, counsel submits the following additional documents:

1. A sworn statement from the applicant dated January 31, 2005, claiming that he entered the United States in 1999.
2. A letter from [REDACTED] Vice-president of [REDACTED], stating that the applicant has been employed with that company from 2000 until January 31, 2005.

3. A sworn statement from [REDACTED] stating that the applicant resided at his house as his tenant from January 1999 through January 2003.
4. A photocopy of a birth certificate of the applicant's son, [REDACTED] dated November 17, 2004.
5. A photocopy of a birth certificate of the applicant's son, [REDACTED] November 17, 2004.
6. A photocopy of the applicant's [REDACTED] passport issued at Long Island, New York on October 8, 2001. Photocopies of Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement for 2002 issued by [REDACTED] and DEPCO Inc.
7. A photocopy of IRS Form 1040, U.S. Individual Income Tax Return for 2002.
8. A photocopy IRS Form W-2, Wage and Tax Statement for 2001 issued by [REDACTED] [REDACTED]
9. A photocopy an amended IRS Form 1040, U.S. Individual Income Tax Return for 2001.

A review of the above evidence shows that the applicant has not provided sufficient evidence to establish his continuous residence since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. Although copies of a Form W-2 and an amended Form 1040 for 2001 were submitted as evidence, the salary earned by the applicant amounting to \$3,600, does not indicate that he was employed during the full year. Thus, the applicant was not able to prove that he worked and earned said wages in the United States during the periods listed above.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated May 24, 2004, is affirmed.