



U.S. Citizenship
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Services

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FILE:



[EAC 02 227 50764]

Office: VERMONT SERVICE CENTER

Date: **NOV 29 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 office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 case will be remanded.

The applicant is a native and 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 Form I-821, Application for Temporary Protected Status, with the VSC on June 20, 2002, during the initial registration period under Citizenship and Immigration Services (CIS) receipt number EAC 02 227 50764. The VSC director denied the application on April 17, 2003, due to abandonment because the applicant failed to respond to a request for evidence in connection with the application. On May 29, 2003, the applicant filed a motion to reopen that decision. The VSC director granted the motion and reopened the application. On March 30, 2006, the VSC notified the applicant of its intent to deny the application because he failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. On May 16, 2006, the VSC director denied the application because the applicant failed to submit a response to the notice, and failed to overcome the grounds for denial.

On May 2, 2007, counsel for the applicant filed an appeal from the decision dated April 17, 2003. On appeal, counsel asserts that the applicant just found out on April 3, 2007, the reason for the denial of his TPS application.

However, as the director's decision of April 17, 2003, was based on abandonment, the AAO has no jurisdiction in this matter. Therefore, the case will be remanded and the director shall consider the applicant's response 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 action consistent with the above and entry of a decision.