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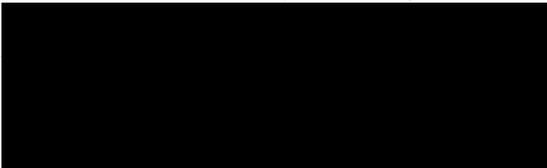


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[SRC 05 227 30441]

Office: TEXAS SERVICE CENTER Date:

IN RE: Applicant: [REDACTED]

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.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant states that he 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 director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

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 initial TPS application on August 15, 2003. On January 21, 2004, the applicant was requested to submit additional evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The notice of intent to deny was mailed multiple times to the most recent address provided by the applicant. The January 2004 envelope was returned marked as undeliverable by the United States Post Office. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on February 26, 2004.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days. The applicant timely responded to the director's decision on March 15, 2004; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. 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. It is noted that the address to which the denial decision was mailed and the address provided by the applicant on appeal, is the same address to which the notice of intent to deny was also previously mailed.

It is noted that the applicant also has not submitted sufficient credible evidence to establish his continuous residence and continuous physical presence during the requisite periods. The pay stub dated August 29, 2002, from Pollo Tropical, Miami, Florida, appears to have been altered. The remaining pay stubs dated in the year 2002, do not contain an employee name or a company name or address, and therefore, have no evidentiary value. The envelope postmarked December 15, 1999, likewise, contains no information about the sender or the addressee. The lease document for the period January 1, 2001 through December 31, 2002, is only a partial copy that bears no evidence of being a legitimate lease document. The letter from the church pastor does not conform to the TPS regulatory provisions. In addition, the Identification Card from the Consulate General of El Salvador, Miami, Florida, indicates that it was issued on a date that precedes the date that the applicant claims to have entered the United States.

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.