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FILE:



Office: Vermont Service Center

Date: JUL 20 2005

[EAC 03 074 54296]

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). The director subsequently opened the case on a motion to reopen and again denied the application. The case 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.

On June 13, 2003, the director denied the application due to abandonment because the applicant failed to respond to a request for additional evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2), and his qualifying continuous residence and his continuous physical presence in the United States. The director informed the applicant that there was no appeal from a denial due to abandonment, but that he could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On August 22, 2003, the applicant filed a motion to reopen the case. On March 31, 2004, the director accepted the applicant's motion to reopen, but determined that the original grounds for denial had not been overcome, and affirmed the previous decision of June 13, 2003 denying the application.

On April 26, 2004, the applicant filed another motion to the director's decision of March 31, 2004. The applicant asserts that he has established continuous residence in the United States since February 13, 2001 and continuous physical presence since March 9, 2001.

There is no appeal from a denial due to abandonment. 8 C.F.R. 103.2(b)(15).

A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. 103.5(a)(6).

In this case, the director denied the original application due to abandonment. Since the original decision was not appealable to the AAO, the AAO has no jurisdiction to consider the current appeal from the director's subsequent decision of March 31, 2004. Therefore, the appeal will be remanded to allow the director to address the subsequent motion.

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.