

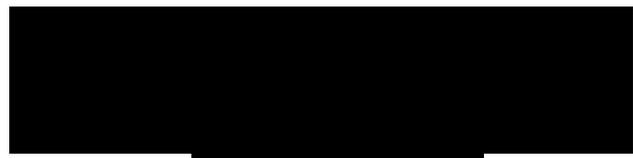
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FILE:



Office: TEXAS SERVICE CENTER

Date:

JUN 07 2005

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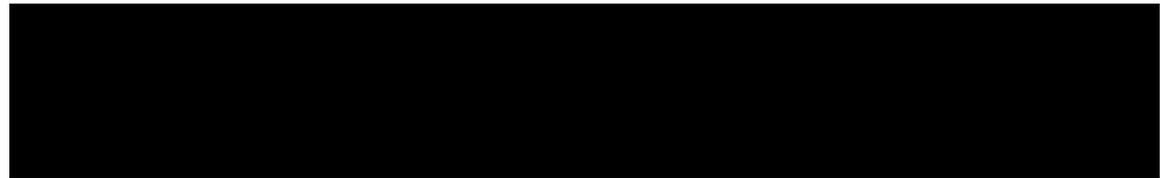
Applicant:



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.

Cindy M. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The applicant filed an untimely motion to reopen that the service center director subsequently dismissed. The matter is now before the Administrative Appeals Office (AAO). The case will be remanded for further consideration and action.

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 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 April 18, 2001, during the initial registration period for El Salvadorans. On January 15, 2003, the applicant was requested to submit additional evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. 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 March 20, 2003.

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 responded to the director's decision on September 19, 2003. The director treated the untimely response as a motion to reopen, and dismissed the motion, stating that the applicant had failed to respond to the initial request for additional evidence and that evidence of continuous residence and continuous physical presence for the requisite dates had not been submitted with the motion.

It is noted that the initial denial due to abandonment was made in error as both the Notice of Intent to Deny dated January 15, 2003, and the Notice of Decision dated March 20, 2003, were incorrectly mailed to "Springdale, WA" [Washington], rather than to the applicant's correct address in Springdale, AR [Arkansas]. The applicant, therefore, was not apprised of the intent to deny nor offered an opportunity to present evidence to establish his eligibility for TPS.

On motion, the applicant submitted: pay stubs; an Internal Revenue Service (IRS) Form 1040EZ for 2002, that bears no evidence of having been filed; IRS Forms W-2, Wage and Tax Statement, from two companies, one of which is located in Minnesota; a letter from an employer, that does not conform to regulatory requirements, for the period of January through March 2003; a medical clinic receipt dated December 20, 2002; a business receipt dated March 3, 2002; a hematology report order dated June 6, 2001; an immunization record reflecting a TB test on "2-07-01;" the Form I-821, Application for Temporary Protected Status, marked as a re-registration and stamped September 19, 2003; and, counsel's letter requesting discretion in accepting this evidence offered in a late motion.

As the director's initial decision of denial was based on abandonment, the AAO ordinarily would have no jurisdiction over this case. However, because the Notice of Intent to Deny and the Notice of Decision were mailed to the incorrect address, the case will be remanded and the director shall consider the evidence of record. The director may request any additional information she deems necessary to determine the applicant's eligibility for TPS.

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.