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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MI

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: MAR 21 2005

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.

Cindy N. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter 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 due to lack of prosecution because the applicant failed to respond to the Notice of Intent to Deny.

On appeal, counsel asserts that the applicant never received the Notice of Intent to Deny. Counsel submits evidence in an attempt to establish the applicant's qualifying continuous residence and physical presence in the United States.

Pursuant to 8 C.F.R. § 244.9(c), failure to timely respond to a request for information without good cause will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information was not mailed to the applicant's most recent address provided to Citizenship and Immigration Services (CIS).

The record shows that the applicant filed his Form I-821, Application for Temporary Protected Status, on April 16, 2001. On February 12, 2003, the applicant was requested to provide additional evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The notice was mailed to the applicant at his address of residence, [REDACTED] but the applicant failed to respond to the notice. The director, therefore, denied the application on January 21, 2004, for lack of prosecution because the applicant failed to respond to the Notice of Intent to Deny. It is noted that the director incorrectly advised the applicant of his appeal rights to the AAO.

The applicant filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), on February 10, 2004. The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, 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.

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 matter is remanded for further consideration and action.