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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1



FILE:



Office: VERMONT SERVICE CENTER

Date:

MAR 20 2015

[EAC 01 179 52075]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent motion to reopen that decision was also denied by the director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 April 13, 2001, the applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) (receipt number EAC 01 179 52075).

On August 30, 2001, the director requested the applicant to submit evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence since March 9, 2001. The record reflects that the applicant failed to respond to the director's request.

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).

On May 16, 2002, the director denied the applicant's initial Form I-821 after determining that the applicant had abandoned his application by failing to respond to the request for evidence. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

On June 17, 2002, the applicant, through his former counsel, filed a motion to reopen (receipt number EAC 02 221 53733) stating that he had not opened the letter containing the director's request for evidence and, therefore, failed to respond to the request.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On September 19, 2002, the director dismissed the applicant's motion.

On October 4, 2002, the applicant filed an appeal of that decision (receipt number EAC 03 045 51745).

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

On February 20, 2003, the director advised the applicant that there is no provision for such an appeal, and the appeal was dismissed.

On May 18, 2003, the applicant filed the instant appeal (receipt number EAC 03 127 54487) of the director's February 20, 2003 dismissal, more than 2 months after the decision was rendered.

As the director's original decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the appeal must be rejected.

Furthermore, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). Since the appeal was filed more than two months after the director's decision, it must also be rejected for this reason.

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 appeal is rejected.