



U.S. Citizenship
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FILE: [REDACTED]
[EAC 01 251 54636]

Office: VERMONT SERVICE CENTER

Date: NOV 17 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: 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. The director subsequently dismissed a motion to reopen the case. The case is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant claims to be a 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 application was filed on August 13, 2001. On June 25, 2003, the director denied the application due to abandonment because the applicant failed to respond to requests for evidence, dated August 26, 2002, and April 1, 2003, in support of his application. The director informed the applicant that there is 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 decision.

On July 14, 2003, the applicant submitted documentation in response to the director's denial. On May 3, 2004, the director issued a second denial of the application. The applicant filed the instant appeal of that decision on June 4, 2004.

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 second denial of the application based upon submissions from the applicant in response to the first denial of the application due to abandonment. Therefore, the appeal must be rejected.

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 consideration and action consistent with the above.