



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: NOV 21 2005
[EAC 01 189 52017]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
, and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[REDACTED]

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.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant claims to be 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 not overcome the basis for the original denial of his TPS application.

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).

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).

The record reveals that the applicant filed his application on April 25, 2001. The director noted that the applicant responded to the question posed on Part 4, 2.d., of the Form I-821 [have you been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations, or been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action], by indicating "3/30/00 ACD." Therefore, the applicant was requested, in a notice of intent to deny dated March 20, 2003, to submit the court disposition of this charge, and of every charge against him. He was also requested to submit evidence to show that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. 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 June 26, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen by July 29, 2003.

On July 29, 2003, the applicant filed a motion to reopen and reconsider his case. He stated that he never received the director's request for evidence.

On March 3, 2004, the director issued a new decision to deny the application based on the applicant's failure to submit the final court disposition of any and all arrests, and failure to establish continuous physical presence in the United States from March 9, 2001, to the date of filing his application. However, there is no evidence in the record that the motion to reopen, timely received by the Service Center on July 29, 2003, was considered by the director.

On April 5, 2004, counsel for the applicant appealed the director's decision. He stated that neither he nor the applicant received the director's request for additional evidence.

The director accepted the applicant's appeal and forwarded the file to the AAO. However, as the initial decision by the director was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded to the director.

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.