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U.S. Citizenship  
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FILE:

[REDACTED]  
[EAC 01 217 50728]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 17 2005

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:

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 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 because the applicant had failed to respond to his request to submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

On appeal, counsel asserts that the Service Center has been aware of her office's representation of the applicant for TPS since September 2002, but they were never informed of the intent to deny; nor was the applicant aware of a notice of intent to deny. Counsel states that as the applicant's representative, she should have been informed of actions taken. She submits additional documentation.

"Affected Party" means the person or entity with legal standing in a proceeding. 8 C.F.R. § 103.3(a)(1)(iii)(B).

8 C.F.R. § 295.5(a) states, in part:

Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

The record of proceeding contains Forms G-28, Notice of Entry of Appearance as Attorney or Representative, dated August 12, 2002, August 21, 2003, and March 25, 2004. The record further shows that the initial filing of the TPS application and subsequent re-registrations were furnished by counsel. To establish that counsel had previously been recognized as the applicant's representative, she submits copies of Forms I-797C, Notice of Action, addressed to [REDACTED] (the applicant's legal representative), indicating that the Service Center received Form I-765, Application for Employment Authorization, on September 23, 2002, on December 6, 2002, and on August 28, 2003.

As claimed by counsel, the record shows that the applicant's legal representative was not served with copies of the notice of intent to deny dated August 18, 2003, and the notice of denial dated March 3, 2004, as required in 8 C.F.R. § 295.5(a). Therefore, the case will be remanded so that the director may properly notify the "affected party, or parties," of her decision.

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.