



U.S. Citizenship  
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Services

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FILE:

[EAC 02 079 51926]

Office: VERMONT SERVICE CENTER

Date: OCT 31 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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was initially denied due to abandonment by the Director, Vermont Service Center. The applicant filed a motion to reopen. The service center director issued two decisions following the motion. The matter is now before the Administrative Appeals Office (AAO). The case 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 initial application after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

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).

The record reveals that the applicant filed his initial TPS application on December 28, 2001. On April 3, 2003, the applicant was requested to submit additional evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since January 5, 1999. 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 3, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen.

The applicant responded to the director's Notice of Decision on October 14, 2003. The applicant stated that he did not receive the Notice of Intent to Deny or the Denial Notice, and believes that this is because his address was incorrectly written on the notices. He stated that he learned through the assistance of an attorney working for an El Salvadoran refugee committee that his address was on record as [REDACTED] rather than [REDACTED].

The applicant stated that he lived at his current address since December 2000, and began his employment in July 2001. He also submitted copies of: his initial application [which gives the address as [REDACTED]]; his El Salvadoran cedula, with English translation; a CIS notice dated September 25, 2003, returning his TPS application for re-registration because his TPS application had been denied; two pay statements dated in July and August 2001; a letter from [REDACTED] dated October 1, 2003, attesting to his acquaintance with the applicant since January 2001; a fingerprint worksheet dated March 20, 2002; a printout of new employees hired on July 30, 2001, from [REDACTED], Boston, Massachusetts, [listing the applicant's address as [REDACTED]]; a money order dated December 22, 2001, payable to the Immigration and Naturalization Service; the business card of the person who prepared his initial TPS application; and, a notarized letter from [REDACTED] attesting to the applicant's residence at "9 Alston Street" since December 2000.

The record contains two decisions issued by the director in reference to the motion. The first decision, date-stamped May 11, 2004, dismissed the motion because it did not provide any new facts to be proved or give reasons for reconsideration. The second decision, also date-stamped May 11, 2004, discusses the applicant's October 14, 2003 motion, and states: "Your motion was dismissed on April 1, 2004, and your case was reopened and then redened. You did not submit sufficient evidence that you resided in the United States shortly before,

and as of February 13, 2001.” The director concluded that the applicant had not established his continuous residence in the United States during the requisite period, and therefore had not overcome the ground for denial. The director informed the applicant that he could appeal the decision to the AAO.

The applicant filed an appeal, including copies of each of the decisions. The applicant submits another letter from [REDACTED] this time attesting to the applicant’s residence at [REDACTED] since January 2001, accompanied by generic, handwritten rent receipts signed by [REDACTED] and dated in January, February and March 2001. While the appeal was pending, the applicant submitted additional evidence in support of his appeal, including photocopies of: a letter from [REDACTED], attesting that the applicant, his nephew, lived with him in Somerville since January 2001, and that he has seen him on a weekly basis since that date; another letter from [REDACTED] attesting to the applicant’s residence at [REDACTED] since January 2001; a letter from [REDACTED] no title given, of [REDACTED] Boston, Massachusetts, certifying that the applicant worked as a full-time employee of the company since July 31, 2001; CIS Forms I-797, Receipt Notices, for his June 14, 2004 appeal, its transfer to the AAO, and his October 14, 2003 motion; and, a copy of the April 3, 2003 notice of intent to deny.

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 denial of the subsequent Motion to Reopen. Therefore, the case will be remanded.

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.