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FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 21 2006**

[EAC 01 205 51965]

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.

Cindy N. Gomez for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A late appeal was treated as a Motion to Reopen and was denied again by the Director, Vermont Service Center. The applicant requested that the director's decision on the motion be reviewed, and this is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

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 July 18, 2003, the director initially determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On September 8, 2003, the applicant filed an untimely appeal that the service center director treated as a motion to reopen the case. The applicant stated that he was waiting for a reply but never received it. The applicant also provides additional evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the qualifying period.

On March 10, 2004, the service center director dismissed the motion because it did not overcome the grounds of denial.

The applicant filed an appeal on April 7, 2004. The applicant states that he did not have any money to pay for any one to review and/or assemble his documentation. The applicant also submits additional evidence, and resubmits evidence previously provided, in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

As the director denied the original motion to reopen, 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 and the director shall consider the motion.

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 and entry of a decision.