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U.S. Citizenship
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FILE:

[REDACTED]

Office: Vermont Service Center

Date: JUN 27 2006

[EAC 02 048 51715]

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.

Robert P. Wiemann, Chief
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.

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 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 application on November 15, 2001. On October 30, 2002, the applicant, through counsel at that time, [REDACTED] was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record did not contain a response from the applicant or counsel; therefore, the director determined that the application had been abandoned and denied the application on April 1, 2003.

On August 23, 2003, counsel, now [REDACTED] on behalf of the applicant, filed a motion to reopen the director's April 1, 2003 decision. The director approved the motion and reopened the application.

On March 9, 2004, the applicant was again requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the qualifying time periods. The director determined that the record did not contain a response from the applicant; therefore, the director denied the application on July 26, 2004. It is noted, however, that the director erred in sending her March 9, 2004 notice of intent to deny the application to the applicant's previous counsel, [REDACTED].

On August 27, 2004, counsel, on behalf of the applicant, submitted an appeal now before the AAO. On appeal, counsel provides some additional evidence in an attempt to establish the applicant's eligibility for TPS. As the director erred in sending her March 9, 2004 notice of intent to deny the application to the applicant's previous counsel, [REDACTED] the case will be remanded and the director shall consider the applicant's response in the issuance of a new decision.

It is also noted that the applicant submitted a copy of his personal identification card issued to him in El Salvador on December 27, 2000; however, the applicant stated on his Form I-821, Application for Temporary Protected Status, that he entered the United States on November 11, 2000. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider counsel's response as a motion to reopen.

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 entry of a new decision.