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U.S. Citizenship
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FILE:

[REDACTED]

OFFICE: NEBRASKA SERVICE CENTER

DATE:

OCT 17 2007

[LIN 03 109 51752]

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, Nebraska Service Center (NSC). A subsequent appeal was rejected by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

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 record reveals that the applicant filed a TPS application during the initial registration period on April 26, 2001, under receipt number LIN 01 176 51778. The director denied that application based on abandonment on March 6, 2002, because the applicant had failed to respond to a request dated June 29, 2001, 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 application. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 3, 2003 [LIN 03 109 51752], and indicated that this is his "first application to register for Temporary Protected Status." The director denied the application on July 23, 2003, because the applicant had failed to respond to a request to submit: (1) evidence to establish that he was eligible for late initial registration; (2) evidence to establish that he had entered and continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001; (3) a photocopy of his birth certificate or passport; and (4) evidence to establish that [REDACTED] are one and the same person.

The applicant appealed the director's decision on September 2, 2003. The appeal was untimely filed; therefore, the director treated the appeal as a motion to reconsider, and rendered a decision on the merits of the case. After a complete review of the record of proceedings, including the motion, the director determined that the grounds for denial had not been overcome. The director, therefore, affirmed his previous decision and denied the application on February 19, 2004.

The applicant appealed the director's decision to the AAO on March 29, 2004. The AAO rejected the appeal on January 5, 2006, because the appeal was untimely filed, after the required 30 days of the denial decision.

On March 27, 2006, the applicant filed a motion to reopen. He states that he did send his appeal within 30 days; however, the instruction was vague and he was confused and sent the appeal to the AAO because there was an "X" on the director's denial decision indicating that the appeal was to be sent to the AAU, and "after calling the USCIS, I was told to the [sic] send it where it was marked." The applicant further states that the AAO's decision indicates that the appeal should have been sent to the "office which made the unfavorable decision;" however, he was confused because nothing specifically said not to send it to the "office which made the unfavorable decision," and that he "called for aid and was told to send it to the AAU." This claim of the applicant is not persuasive. The AAO was referring to the Form I-290B which states, in part: "Form I-290B, Notice of Appeal, is very clear in indicting that the appeal is not to be sent directly to the AAO; but rather, to the 'office which made the unfavorable decision.'" It is acknowledged that the director's denial decision is confusing and appears to conflict with the Form I-290B. However, the applicant, in this case, has failed to overcome the director's initial findings.

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). A review of the record reveals that the applicant has presented no new facts or other documentary evidence in support of the motion to reopen. While the applicant, on motion, furnished a copy of his birth certificate and his El Salvadoran passport, and evidence

to show that [REDACTED] is one and the same person, he failed to submit evidence that [REDACTED] is also the same person as the applicant. It is also noted that the record contains a pay statement under the name of [REDACTED]. There is also no evidence to show that this person is the same as the applicant. Additionally, the applicant neither addressed nor submitted any evidence to overcome the director's original findings that the applicant had failed to establish eligibility for late initial registration, or that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

Accordingly, the motion will be dismissed, and the previous decision of the AAO will be affirmed.

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 motion is dismissed. The decision of the AAO dated January 5, 2006, is affirmed.