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U.S. Citizenship
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FILE:



Office: Vermont Service Center

Date:

MAR 22 2007

[EAC 02 201 51362]

IN RE:

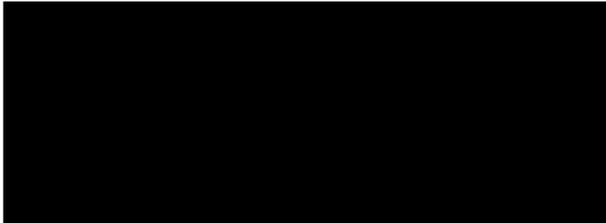
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 M. Gomez for
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 for the Vermont Service Center director to treat as a motion to reopen or reconsider.

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 reflects that the applicant's initial TPS application was filed on May 22, 2002, under CIS receipt file number EAC 02 201 51362. On December 10, 2003, the director denied that application because the applicant failed to submit a final court disposition requested in a June 30, 2003 Notice of Intent to Deny (NOID). The director noted that the applicant had indicated in his TPS application that he had been charged in 2002, with "DWI" in Northumberland County, Virginia.

On March 12, 2004, the applicant's counsel filed this late appeal to reopen the decision. An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). An appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). If, however, an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2). A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On appeal, counsel states that the applicant was not aware that his TPS application was denied until the applicant was notified, on January 21, 2004, of the denial of his recent employment authorization application because his initial TPS application had been denied. It is noted that the record reflects that the NOID and the denial decision were mailed to the applicant's former attorney, and the denial decision (date-stamped December 11, 2003) was mailed to the applicant at [REDACTED]. However, according to the record of proceedings, at that time the applicant's address was [REDACTED] as evidenced by an Application for Employment Authorization, filed September 15, 2003, and by CIS notice, dated October 21, 2003, acknowledging receipt of the Application for Employment Authorization. The denial decision of the TPS application (which was returned as undeliverable) was clearly mailed in error to the wrong address. As the applicant, through no fault of his, did not have proper notice of the denial of his TPS application, the director should have considered the late appeal as a motion to reopen or reconsider. However, the director accepted the late appeal and forwarded it to AAO.

It is also noted that the record of proceedings does not contain the final court disposition for the charge of "DWI" in Northumberland County, Virginia, referenced above. CIS must address this charge and any convictions in this and any future proceedings.

Therefore, the case will be remanded and the director shall consider the appeal as a motion to reopen or reconsider, and reissue the Notice of Intent to Deny to give the applicant the opportunity to provide final court disposition (s) for any arrests, charges, and/or convictions.

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.