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FILE: [REDACTED]  
[EAC 01 189 56843]

Office: VERMONT SERVICE CENTER

Date: **AUG 16 2005**

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, Director  
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 further consideration and action.

The applicant is stated to be 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 April 27, 2001. On April 16, 2002, and January 30, 2003, the applicant was requested, through his representative, to submit evidence to establish that he had continuously resided in the United States since February 13, 2001. The record reflects that the applicant failed to respond to both requests; therefore, the director concluded that the applicant had abandoned his application and denied the application on June 25, 2003. The director advised that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant, through his representative, responded to the director's decision on July 26, 2003. The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, 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 applicant's response shall be considered 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 for further action consistent with the above and entry of a decision.