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U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[EAC 02 047 57468]

Office: Vermont Service Center

Date: **DEC 05 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: 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.

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 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 initial application on October 18, 2001. On November 20, 2002 and again on February 12, 2003, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record did not contain a response from the applicant; therefore, the director denied the application on May 28, 2003.

On July 1, 2003, the applicant filed a motion to reopen from the director's May 28, 2003 decision. The director denied this motion on February 13, 2004. On March 15, 2004, the applicant filed a subsequent motion to reopen from the director's February 13, 2004 decision. The director denied this second motion on June 10, 2004.

A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. § 103.5(a)(6).

On appeal, the applicant provides some additional evidence in an attempt to support of his eligibility for TPS. As the director's initial decision to deny the application was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant'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 further action consistent with the above and entry of a decision.