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U.S. Citizenship  
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**JAN 25 2005**

FILE: 

Office: CALIFORNIA SERVICE CENTER Date:

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: 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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter 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 on September 25, 2003, because the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On October 28, 2003, the applicant filed an appeal from the director's decision. On appeal, the applicant repeats his claim to have resided in the United States since January 1, 2000, and submits additional evidence in support of his claim.

On October 31, 2003, the director reopened the matter and issued a new Notice of Intent to Deny requesting that the applicant submit additional evidence in an attempt to establish continuous residence and physical presence in the United States. The director stated:

The applicant filed Form I-821, pursuant to section 244 of the Immigration and Nationality Act. On September 25, 2003, the Service denied the application due to abandonment. On October 28, 2003, the applicant filed a motion to reopen or reconsider the adverse decision.

After reviewing the motion, the Service has determined that the applicant has overcome the grounds of the abandonment denial. The motion is granted and the application is reopened or reconsidered for review in accordance with 8 C.F.R. § 103.5(a) relating to motions.

It is noted that the director did not deny the application due to abandonment in his decision dated September 25, 2003, but rather because the applicant had not established continuous residence and physical presence in the United States during the requisite periods. Further, the record contains no indication that the applicant ever filed a motion to reopen and reconsider. As previously stated, the applicant filed an appeal from the director's decision on October 28, 2003.

The applicant was granted 30 days, until November 30, 2003, to respond to the Notice of Intent to Deny dated October 31, 2003. The record does not contain a response from the applicant. The matter is remanded for the issuance of a new decision based on the evidence of record, and the director's subsequent re-opening of the decision and acceptance of the appeal as a motion.

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 matter is remanded.