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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 02 100 51318]

Office: VERMONT SERVICE CENTER

Date: NOV 08 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. The director subsequently dismissed a motion to reopen the case. The case is now before the Administrative Appeals Office (AAO) on appeal and will be remanded for further consideration and action.

The applicant claims 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.

On June 27, 2003, the director denied the application due to abandonment because the applicant failed to appear to be fingerprinted or request another appointment to be fingerprinted. The director informed the applicant that there is no appeal from a denial due to abandonment, but that she could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On July 21, 2003, the applicant filed a motion to reopen the case. On motion, counsel for the applicant stated that the applicant never received the fingerprint appointment notice, even though she was still residing at the address listed on the Form I-821, Application for Temporary Protected Status. It is noted that the fingerprint appointment notice was mailed to the applicant at [REDACTED] the same address the applicant listed on her form I-821.

On January 27, 2004, the director reopened the matter and provided the applicant with another opportunity to be fingerprinted. The applicant appeared for her fingerprint appointment as scheduled.

The director subsequently denied the application on July 30, 2004, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United State since March 9, 2001.

The applicant filed an appeal on August 27, 2004. On appeal, counsel asserts that the applicant failed to respond to the Notice of Intent to Deny dated April 28, 2004, because she never received the notice. It is noted that the Notice of Intent to Deny was mailed to the applicant in care of counsel at [REDACTED]. Counsel submits additional evidence in an attempt to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

There is no appeal from a denial due to abandonment. 8 C.F.R. § 103.2(b)(15).

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).

The director accepted the applicant's response to the director's latest decision as an appeal and forwarded the file to the AAO. However, in this case, the director denied the original application due to abandonment; since the original decision was not appealable to the AAO, the AAO has no jurisdiction to consider the current appeal from the director's denial of the subsequent Motion to Reopen. Therefore, the case will be remanded and the director shall consider the applicant's response as a Motion to Reopen.



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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.