



U.S. Citizenship  
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FILE: [REDACTED]  
[EAC 03 264 50255]

Office: VERMONT SERVICE CENTER

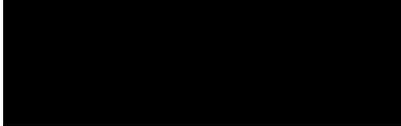
Date: NOV 16 2005

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.

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. The case will be remanded for further consideration and action.

The applicant is a 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 4, 2003, the director denied the application due to abandonment because the applicant failed to respond to a request for evidence in support of his application. The director informed the applicant that there is no appeal from a denial due to abandonment, but that he could file a motion to reopen the case within 33 days of the date of issuance of the decision.

On September 27, 2003, the applicant filed a motion to reopen the case.

On April 2, 2004, the director reopened the matter and reaffirmed his previous decision. The director erroneously advised the applicant that he could file an appeal of that decision.

The applicant filed the instant appeal on May 5, 2004.

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).

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 dismissal of the subsequent motion to reopen. Therefore, the case will be remanded and the director shall consider the applicant's appeal 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 consideration and action consistent with the above.