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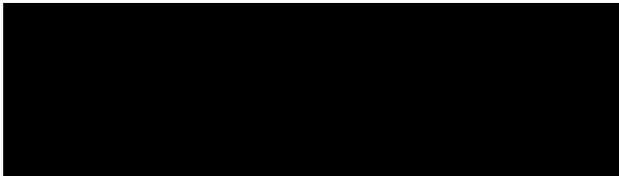
DATE: NOV 21 2005

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, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further 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 not overcome the basis for the original denial of his TPS application.

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).

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).

The record shows that the applicant filed her initial application on April 9, 2002. On February 27, 2003, the applicant was requested to submit evidence to establish: (1) that she is a citizen or national of El Salvador; (2) that she had continuously resided in the United States since February 13, 2001; and (3) that she had been continuously physically present from March 9, 2001, to the date of filing her application. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a notice of decision on April 14, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

On September 8, 2003, the applicant appealed the director's decision. She submitted a copy of her El Salvadoran passport as evidence that she is a citizen and national of El Salvador. She also submitted additional evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States.

Because the appeal was filed later than the prescribed period of 33 days, the director rejected the appeal and accepted it as a Motion to Reopen. After a complete review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome and again denied the application on March 31, 2004.

On April 29, 2004, the applicant appealed the director's decision to deny the application. The director accepted the applicant's appeal and forwarded the file to the AAO. However, as the initial decision by the director was based on abandonment, the AAO has no jurisdiction over an appeal based on a decision made as a result of a motion. Therefore, the case will be remanded to the director.

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.