



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 01 241 50890]

OFFICE: VERMONT SERVICE CENTER Date: **NOV 30 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, reopened, and denied again by the Director, Vermont Service Center. The case is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

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 April 18, 2003, the director denied the application due to abandonment because the applicant failed to respond to the request for evidence. 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 Notice of Decision.

On May 20, 2003, the applicant filed a motion to reopen the case. The applicant stated that she never received the Notice of Intent to Deny.

On March 24, 2004, the director granted the applicant's motion to reopen and sent her another Notice of Intent to Deny requesting that she submit evidence to establish continuous residence and continuous physical presence in the United States during the requisite time period.

The applicant failed to respond to the director's second request for evidence.

The director subsequently denied the applicant's TPS application on July 26, 2004.

The applicant filed an appeal on August 26, 2004. On appeal, the applicant claims that she was unable to work during the requisite period because she was pregnant and that she submitted the affidavits as her proof of continuous residence and continuous physical presence.

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 denial of the subsequent Motion to Reopen. Therefore, the case must be remanded.

ORDER: The matter is remanded to the Vermont Service Center for further consideration.