

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



U.S. Citizenship  
and Immigration  
Services

MI



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **OCT 19 2005**  
[EAC 01 240 50552]

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*  
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 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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

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).

The record reveals that the applicant filed his initial TPS application on August 1, 2001.<sup>1</sup> On November 21, 2002, the applicant was requested to submit evidence to establish his continuous physical presence and his continuous residence in the United States during the requisite timeframes. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application. Consequently, the director denied the application on June 27, 2003, and advised the applicant that there is no appeal from this decision. The director informed the applicant that the applicant may file a motion to reopen a petition or application denied due to abandonment with evidence that the decision was in error because:

1. The requested evidence was not material to the issue of eligibility.
2. The required initial evidence was submitted with the application or petition, or the request for initial evidence of additional information or appearance was complied with during the allotted period; or
3. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The applicant was given until July 30, 2003 to file a motion to reopen.

The applicant submitted a motion on July 30, 2003. On appeal, the applicant provides a brief statement. The file was forwarded to the AAO in error. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

---

<sup>1</sup> It is noted that the applicant was five years old at the time of application.

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.