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**U.S. Citizenship
and Immigration
Services**

MI

FILE:

[REDACTED]
[EAC 02 003 53469]

OFFICE: VERMONT SERVICE CENTER

DATE: **JAN 06 2006**

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded.

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.

On June 6, 2003, the director denied the application after determining that the applicant had abandoned her application by failing to respond to a request for evidence. 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 8, 2003, the applicant filed a motion to reopen the case. On motion, the applicant did not make a statement or submit any additional evidence.

On April 6, 2004, the director reopened the matter and issued a second Notice of Intent to Deny providing the applicant with another opportunity to submit additional evidence to establish her qualifying continuous residence and continuous physical presence in the United States. The record does not contain a response from the applicant.

When an officer denies an application, "the officer shall explain in writing the specific reasons for denial." 8 C.F.R. § 103.3.

The director denied the application on July 16, 2004; however, the director's decision does not clearly indicate the specific basis for the denial.

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 and shall issue a new decision that sets forth the specific reasons for the denial.

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.