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FILE: [REDACTED]
[EAC 02 178 50587]

OFFICE: VERMONT SERVICE CENTER

Date: **JAN 26 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The director dismissed a motion to reopen the case. The director subsequently reopened the case and denied the application again, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration and action.

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 December 3, 2002, 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 11, 2003, the applicant filed a motion to reopen the case. The applicant stated that she never received the Request for Evidence dated August 14, 2002.

On March 9, 2004, the director dismissed the motion as untimely filed and found that it did not meet the requirements of a motion to reopen as set forth in 8 C.F.R. § 103.5(a)(4).

The applicant filed another motion to reopen the case on March 29, 2004. On motion, the applicant repeated her statement that she never received the Request for Evidence dated August 14, 2002.

On July 30, 2004, the director reopened the case and denied the application again because the applicant failed to establish continuous residence in the United States since February 13, 2001.

On August 30, 2004, the applicant filed an appeal from the denial decision. On appeal, the applicant states that she has submitted sufficient evidence to establish her qualifying continuous residence in the United States. She submits additional evidence to establish continuous residence in the United States during the requisite period.

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 applicant's second Motion to Reopen. Therefore, the matter will be remanded and the director shall consider the applicant's response as a Motion to Reopen.

It is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001.

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 matter is remanded to the director for further action consistent with the above and entry of a decision.