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FILE:

[EAC 03 023 52510]

OFFICE: VERMONT SERVICE CENTER

Date: **JAN 26 2006**

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, 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 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 June 23, 2003, the director denied the application after determining that the applicant failed to respond to a Notice of Intent to Deny dated April 3, 2003. The director informed the applicant that there is no appeal from a denial due to abandonment, but he could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On September 12, 2003, the applicant filed a motion to reopen the case. The applicant stated that he complied with the request for evidence.

On September 14, 2004, the director reopened the matter and denied the application because the applicant failed to establish that he is eligible for late registration.

The applicant filed an appeal on October 15, 2004. On appeal, the applicant states that he is submitting evidence that he submitted his application on time. He submits additional evidence relating to his residence and physical presence in the United States, but he does not submit any evidence to establish his eligibility for late registration.

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.

It is noted that the record of proceeding, as it is presently constituted, does not contain any evidence to establish the applicant's eligibility for late registration. It is further noted that the record does not contain sufficient evidence to establish the applicant's continuous residence in the United States since February 13, 2001, or his 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 case is remanded to the director for further action consistent with the above and entry of a decision.