

PUBLIC COPY

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



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

MM

[Redacted]

FILE: [Redacted] Office: Vermont Service Center Date: **MAR 27 2006**
[EAC 01 191 51229]

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:

[Redacted]

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 case 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. 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 application on April 30, 2001. On September 4, 2001, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record did not contain a response from the applicant; therefore, the director denied the application on May 29, 2002, due to abandonment.

On August 30, 2003, the applicant filed a motion to reopen from the director's May 29, 2002, decision. The director denied this motion on March 15, 2004. On April 8, 2004, the applicant, through counsel, filed an appeal, which is now before the AAO.

On appeal, counsel provides some additional evidence in support of the applicant's claim of eligibility for TPS. As the director's initial decision to deny the application 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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for 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.