



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
[EAC 99 212 52403]

Office: VERMONT SERVICE CENTER

Date: **MAY 09 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, reopened, denied, reopened, and denied again by the Director, Vermont Service Center. The case is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant is a citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On November 29, 2000, the director denied the application due to abandonment because the applicant failed to respond to a request for evidence in support of his application. The director informed the applicant that there is no appeal from a denial due to abandonment, but that he could file a motion to reopen the case within 33 days of the date of issuance of the decision.

The director subsequently reopened the matter on two occasions and reaffirmed his previous decision(s) to deny the application.

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).

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 dismissal of a 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 reflects that the applicant has been convicted of the following offenses:

1. In Fairfax, Virginia, on January 12, 1994 of two (2) charges of Pointing, Holding, or Brandishing a Firearm;
2. In Arlington, Virginia, on February 15, 1995, of Driving While Intoxicated.

Therefore, it appears that the applicant is ineligible for TPS due to his conviction of two or more misdemeanor offenses, detailed above. 8 C.F.R. § 244.4(a).

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 consideration and action consistent with the above.