

**PUBLIC COPY**

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



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

*MM*

FILE:

[SRC 99 157 50099]

OFFICE: VERMONT SERVICE CENTER

DATE: **NOV 02 2006**

IN RE:

Applicant:

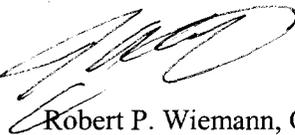
APPLICATION:

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 Vermont Service Center. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant claims to be a 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 application was filed with the Texas Service Center on April 22, 1999. On June 26, 2002, the Director of the Texas Service Center denied the application due to abandonment because the applicant failed to respond to a request for evidence, dated February 11, 2002, in support of her application. 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 decision. The record reflects that the applicant did not file a motion to reopen within the requisite time frame.

On October 8, 2004, the Director of the Vermont Service Center reopened the matter and again requested the applicant to submit evidence in support of her application. On December 2, 2004, the applicant responded to the director's request.

On January 10, 2005, the Director of the Vermont Service Center issued a second denial of the application. The applicant, through counsel, filed the current appeal from that decision on January 28, 2005.

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 of the Texas Service Center 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 of the Vermont Service Center's second denial of the application. Therefore, the case will be remanded to the Director of the Vermont Service Center, who shall consider the applicant's response as a motion to reopen.

It is noted that the applicant appears to be ineligible for TPS due to her having been convicted of two or more misdemeanor offenses. 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.