

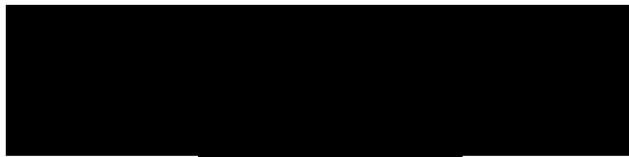
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FILE: [REDACTED]  
[EAC 02 003 53109]

Office: VERMONT SERVICE CENTER

Date: **NOV 27 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and denied 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 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 18, 2003, 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.

On February 12, 2004, more than 33 days after the director's denial, the applicant submitted additional documentation in support of his application. Although a formal motion to reopen was not submitted, and the required fee for a motion to reopen was not paid, the director reopened the case and issued a second notice of intent to deny the application on June 21, 2004, indicating that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On August 13, 2004, the applicant submitted documentation in support of his application. The director then issued a second denial of the application on October 6, 2004, indicating that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

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 applicant still has not provided sufficient evidence of his continuous residence and continuous physical presence. It also appears that his El Salvadoran personal identification card (*Carte de Identification Personal*) was issued to him in El Salvador on February 16, 2001, after his claimed date of entry into the United States on February 10, 2000.

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.