



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 02 043 51024]

Office: Vermont Service Center

Date: MAR 02 2007

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.

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

The applicant is 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 December 3, 2002, the director denied the application after determining that the applicant had abandoned his application by failing to appear for his scheduled fingerprint appointment. 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 Notice of Decision.

On November 7, 2003, the applicant filed a motion to reopen the case. The applicant stated that he never received a notice for fingerprinting and that he did not receive a notice that his case was being closed.

On May 12, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States "as of February 13, 2001," and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant, in response, submitted some evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. The director determined that the evidence submitted by the applicant was not sufficient to cover the requisite time periods for continuous residence and continuous physical presence in the United States. Therefore, the director denied the application on July 19, 2004.

The applicant filed an appeal on July 31, 2004. On appeal, the applicant stated that he is submitting additional evidence in support of his residence in the United States. The applicant also submits two affidavits along with his appeal.

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. Therefore, the case will be remanded and the director shall consider the applicant's response as a Motion to Reopen.

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.