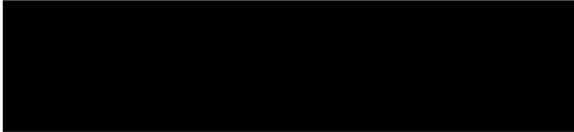


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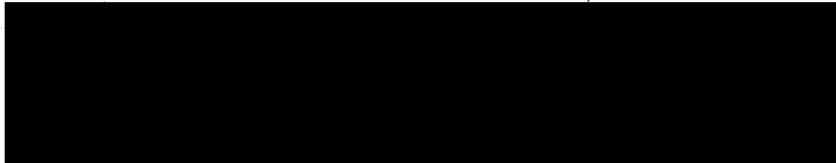
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FILE: [REDACTED]  
[EAC 01 257 53919]

OFFICE: VERMONT SERVICE CENTER

DATE: MAR 02 2007

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The director subsequently dismissed a motion to reopen the case. The case is now before the Administrative Appeals Office (AAO) on appeal and 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 applicant submitted his initial TPS application on August 17, 2001. On July 24, 2003, the applicant was requested to appear for fingerprinting. The record of proceeding shows that the applicant failed to appear for fingerprinting, as scheduled.

On January 22, 2004, the director denied the application after determining that the applicant had abandoned his application by failing to report for fingerprinting as scheduled. 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 February 2, 2004, the applicant filed a motion to reopen the case. The applicant stated that he did not receive any notice to appear for fingerprinting.

On August 30, 2004, the director dismissed the TPS application because the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant filed an appeal on September 3, 2004. On appeal, the applicant reasserts his claim of eligibility for TPS.

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.

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.