



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



M1

FILE:



Office: Vermont Service Center

Date:

JUL 20 2006

[EAC 02 138 52333]

IN RE:

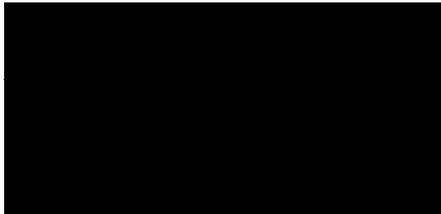
Applicant:



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 terminated, reopened, 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 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.

On June 6, 2003, the director terminated the application after determining that the applicant had abandoned her application by failing to appear for her scheduled fingerprint appointment. The director reopened the case and on December 3, 2004, the applicant was requested to submit evidence establishing her qualifying continuous residence in the United States, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. The director determined that the record did not contain a response from the applicant and therefore, denied the application on February 3, 2005, because the grounds for denial had not been overcome.

On March 9, 2005, the applicant filed a motion to reopen the case and stated that "she has always complied with all the requests." The director dismissed the motion to reopen on April 7, 2005, because the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States.

The applicant filed an appeal which is now before the AAO. Counsel submits additional evidence on appeal in an attempt to establish the applicant's claim of eligibility.

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.