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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 07 2005
[EAC 02 043 51305]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The Director of the Administrative Appeals Office (AAO) rejected an appeal from the denial decision. The service center director subsequently reopened the matter and denied the application again, and the matter is now before the AAO on appeal. The matter 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 November 4, 2002, the service center director denied the application due to abandonment because the applicant failed to respond to request for evidence dated May 29, 2002. The service center 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 December 4, 2002, the applicant filed an appeal from the denial decision. The applicant stated that she failed to respond to the request for evidence dated May 29, 2002, because she never received the notice.

On April 29, 2003, the Director of the AAO rejected the appeal because there is no appeal from a denial due to abandonment.

The service center subsequently reopened the matter and denied the application again on August 3, 2004, because the applicant failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant filed an appeal on August 31, 2004. On appeal, the applicant states that she doesn't have much evidence to submit to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods because she was an undocumented person. She further states that her brother supported her financially when she first came to the United States, and she has been supported by her husband since their marriage. She submits additional evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite 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.

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.