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**U.S. Citizenship
and Immigration
Services**

M1

DEC 29 2006

DEC 25 2006

[REDACTED]

FILE:

[REDACTED]

[EAC 02 280 53621]

Office: VERMONT SERVICE CENTER

Date:

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:

[REDACTED]

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

The applicant claims to be 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 July 22, 2003, the director automatically terminated the application due to abandonment.

On February 16, 2006, the director again denied the application on the basis that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant filed his appeal from that decision on March 21, 2006.

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 consideration and action consistent with the above.