



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: Vermont Service Center

Date: MAY 31 2006

[EAC 01 196 54747]

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:

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, 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 May 16, 2002, the director denied the application after determining that the applicant had abandoned her application by failing to respond to a request for evidence in order to establish her qualifying continuous residence and continuous physical presence in the United States. The director informed the applicant that there is no appeal from a denial due to abandonment, but that she could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On May 23, 2002, the applicant filed a motion to reopen the case. The applicant stated that she did submit evidence in response to the director's request; however, she had lost the notice.

On May 27, 2003, the director again requested the applicant to submit evidence to establish her qualifying continuous residence in the United States and her continuous physical presence in the United States. On June 19, 2003, the applicant responded to the director's May 27, 2003 request. The director determined that the evidence submitted by the applicant only documented her presence after November 2001. The director, therefore, denied the application on July 18, 2003.

The applicant filed an appeal which is now before the AAO. The applicant also submits some evidence in an attempt to establish her 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. 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.