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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 01 226 59055]

Office: VERMONT SERVICE CENTER

Date: OCT 30 2006

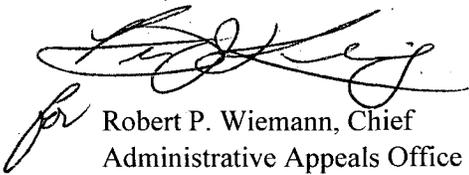
IN RE: Applicant: [REDACTED]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was initially denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). An untimely motion to reopen was filed. The director of the service center denied the motion. It is now before the Administrative Appeals Office (AAO) on appeal. The case 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.

In the initial denial on this application, the director determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The applicant filed his initial application for TPS on July 9, 2001. On April 29, 2003, the application was denied by the director for failure to establish continuous residence since February 13, 2001 and continuous physical presence in the United States from March 9, 2001. The applicant filed an appeal, which was subsequently denied by the AAO on April 27, 2004. The applicant filed a motion to reopen on June 12, 2004. The director accepted the motion and dismissed the motion on August 10, 2004. On October 4, 2004, the applicant appealed the August 10, 2004 decision. The director accepted the appeal and forwarded the file to the AAO. However, as the Service Center director last heard the case on motion, [on an appeal that would have otherwise been rejected by the AAO as untimely filed], the AAO has no jurisdiction over this case. 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.