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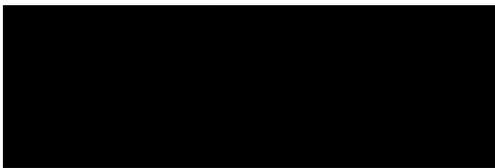
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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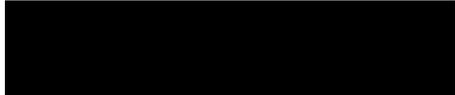
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, D.C. 20536



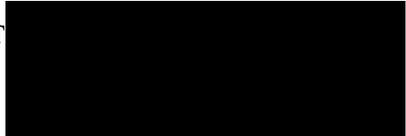
File: 

Office: Vermont Service Center

Date: **DEC 18 2003**

IN RE: Applicant: 

Application: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

IN BEHALF OF APPLICANT 

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez
Robert P. Wiemann, Director *for*
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

The applicant is a native and citizen of El Salvador who indicated on her application that she entered the United States on August 17, 2000 without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, for failure to respond to a request for evidence to establish her eligibility for TPS.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. 103.2(b)(15).

The record reveals that the applicant filed her application on April 20, 2001. On May 11, 2002, the applicant was requested to submit additional evidence establishing her qualifying residence and physical presence in the United States. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Denial on March 6, 2003. In compliance with the director's instructions, the applicant submitted a motion to reopen her case. On motion, the applicant states that her representative erred in not keeping her informed of all requests from CIS. The applicant also submits additional evidence.

The director accepted the motion as an appeal and forwarded the file to AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction on this case, and it may not be appealed to the AAO. Therefore, the case will be remanded and the director shall consider the motion.

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.