

U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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prevent clearly unwarranted  
invasion of personal privacy

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 02 2004**

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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. The director denied the application after determining that the applicant had abandoned her application by failing to respond to a request for evidence.

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).

In this case, the applicant filed the Form I-821, Application for Temporary Protected Status, on September 9, 2001. On January 20, 2003, the director issued a notice informing the applicant of his intent to deny the application. The applicant was requested to provide evidence of identity and nationality, and evidence to establish the applicant's continuous residence and physical presence in the United States during the requisite periods. The notice was mailed to the applicant's address of record, and there is no indication in the record that the notice was returned to Citizenship and Immigration Services (CIS) as undeliverable mail. The applicant was still residing at the same address as of the date of filing of the appeal.

The director erroneously advised the applicant that she could file an appeal from this decision within 30 days. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. The director's error does not, and can not, supersede the regulations. Therefore, the appeal must be rejected.

However, in the director's discretion, he may reopen the decision on a Service motion pursuant to 8 C.F.R. § 103.5(a)(5), or excuse the late filing of a new motion under the requirements of 8 C.F.R. § 103.5(a)(1)(i).

**ORDER:** The appeal is rejected.