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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 24 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

*Transmitting data deleted in  
accordance with immigration  
records management system*

*PHOTOCOPY*

**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).

The record reveals that the applicant filed her application on March 22, 2002. On January 30, 2003, the applicant was requested to submit additional evidence establishing her nationality/identity. 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 July 11, 2003. 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).

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 appeal is rejected.