

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

Identifying data deleted to
prevent disclosure and unwanted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

MI



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

DEC 15 2004

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, 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 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.

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 October 1, 2001. On February 23, 2003, the applicant was requested to submit additional evidence establishing her qualifying residence in the United States, and final court dispositions of her arrests in Los Angeles on June 24, 1994, on February 5, 1995, and on April 2, 1995. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and denied the application on May 1, 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 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.