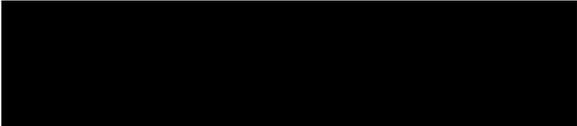




U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 08 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

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prevent clearly unwarranted  
invasion of personal privacy**

**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 shows that the applicant filed her Form I-821, Application for Temporary Protected Status, on May 15, 2001. On February 12, 2003, the applicant was requested to provide additional evidence of continuous residence in the United States since February 13, 2001, and continual physical presence in the United States since March 9, 2001. The notice was mailed to the applicant at her address of record, but she failed to respond to the notice. There is no indication in the record that the notice was returned to Citizenship and Immigration Services (CIS) as undeliverable mail.

The director determined that the applicant had abandoned her application and issued a denial on December 24, 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 cannot, 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).

It is noted that an Immigration Judge ordered the applicant deported from the United States in a deportation hearing on March 6, 1998. The District Director, Los Angeles, issued a Form I-205, Warrant of Removal/Deportation, on March 17, 1998. The District Director also issued a separate notice on the same date instructing the applicant to appear at the Los Angeles District Office on April 13, 1998, for deportation to El Salvador. The applicant failed to appear to be deported as ordered. The applicant indicated on the Form I-821 that she has never been under immigration proceedings in the United States. Therefore, she may be inadmissible under section 212(a)(6)(C)(i) as an alien who sought to obtain an immigration benefit through the willful misrepresentation of a material fact.

**ORDER:** The appeal is rejected.