



U.S. Citizenship  
and Immigration  
Services

MM

[Redacted]

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

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

**PUBLIC COPY**  
Identifying data deleted to  
prevent identity information  
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 indicates that the applicant filed her Form I-821, Application for Temporary Protected Status, on November 12, 2002. On June 12, 2003, the applicant was requested to provide additional evidence of continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. In response, the applicant provided an affidavit from [REDACTED] who states that he is the brother of the applicant's sister-in-law. He further states that he has personal knowledge that the applicant has been physically present in the United States since October 2000, and that she has lived with her sister and brother-in-law since her arrival in the United States.

On July 29, 2003, the director issued a second Notice of Intent to Deny requesting that the applicant provide evidence to establish her eligibility for late registration. The notice was mailed to the applicant at her address of record, but she failed to respond to the notice. On January 13, 2004, the director denied the application because the applicant had abandoned her application by failing to respond to a request for additional evidence. 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 the record as it is presently constituted does not contain sufficient evidence to establish continuous residence in the United States since February 13, 2001, or continuous physical presence in the United States since March 9, 2001.

**ORDER:** The appeal is rejected.