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FILE: [REDACTED]
[WAC 03 079 53751]

Office: CALIFORNIA SERVICE CENTER

Date: DEC 13 2005

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:



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 to the director for further action.

The applicant claims to be 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 January 10, 2003. On March 23, 2004, the applicant was requested to submit: (1) evidence to establish that she was eligible for late initial registration; and (2) documentation to establish her identity. 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 June 30, 2004. The director erroneously advised the applicant that she could file an appeal from this decision within 30 days.

Counsel responded to the director's decision on July 23, 2004. She requested that the TPS application be reopened because the applicant never received the notice requesting additional documentation. She stated that the applicant submitted a change of address through an AR-11 (Alien's Change of Address Card). Counsel provided additional documentation in support of her claim.

The director accepted the applicant's response as an appeal and forwarded the file to the AAO. However, as the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the notice of intent to deny dated March 23, 2004, was sent to the applicant's address at [REDACTED]. The copy of AR-11, furnished on appeal, shows that the applicant requested that her address be changed from [REDACTED]. While the AR-11 was dated by the applicant on April 27, 2004, there is not evidence that this change of address was mailed by the applicant and received by Citizenship and Immigration Services.

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.