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



U.S. Citizenship  
and Immigration  
Services

MI

[Redacted]

FILE:

[Redacted]

Office: Texas Service Center

Date: JAN 24 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:

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.

*Cindy N. Gomez for*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas 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 for TPS on May 2, 2001. On January 25, 2003, the applicant was requested to submit additional evidence establishing her continuous physical presence in the United States since March 9, 2001. The record indicates that the applicant responded to the Notice of Intent to Deny on August 26, 2003, at the same time that she submitted her appeal. The director concluded that the applicant had abandoned her application and denied the application on June 19, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the director's Notice of Intent to Deny on August 26, 2003, more than 68 days after the issuance of the director's decision. The applicant states that she was 8 months pregnant when she received the request for additional evidence and was on complete bed rest and therefore unable to send the requested evidence. The applicant also provided additional documentation in support of her claim.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen 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.

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.