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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
[SRC 02 034 53751]

Office: TEXAS SERVICE CENTER

Date: JUL 18 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, 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 on October 3, 2001. The director states that on January 12, 2003, the applicant was requested to provide additional evidence. However, the director's January 12, 2003 request is not a matter of record. After not receiving a response from the applicant, the director concluded that the applicant had abandoned her application and denied it on August 26, 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 decision on September 23, 2003. Counsel states that the applicant requested that her TPS application be reopened and stated that although she remained at the same address for over 16 months after filing her application, she never received a request for any additional evidence in support of her application. Counsel further states that the applicant believed that her I-821 had been approved and that there was no need to file a change of address notice in conjunction with that application because she had already received two employment authorization cards by the time she changed her residence.

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.

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 for further action consistent with the above and entry of a new decision.