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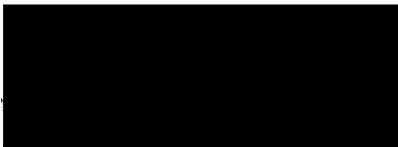
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
[EAC 02 277 51866]

Office: VERMONT SERVICE CENTER

Date: MAR 08 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 stated 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 applicant filed her initial Form I-821, Application for Temporary Protected Status, on August 31, 2002. On April 25, 2003, and again on May 30, 2003, the director requested the applicant to submit evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The record reflects that the applicant failed to respond to the director's request.

The director concluded that the applicant had abandoned her application and denied the application on July 22, 2003. The director erroneously advised the applicant that she could file an appeal from this decision within 30 days. The applicant responded to the director's decision by filing an appeal on August 19, 2003.

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, supercede the regulations. Therefore, the case will be remanded and the applicant's response shall be considered 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 for further consideration and action.