



U.S. Citizenship
and Immigration
Services

M1

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 11 2006
[EAC 02 179 50378]

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
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 record reveals that the applicant filed her initial Form I-821, Application for Temporary Protected Status, on May 1, 2002. On December 12, 2002, 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. Therefore, the director concluded that the applicant had abandoned her application and denied the application on July 17, 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 August 1, 2003, requesting that her application be reopened. The director dismissed the applicant's motion on February 17, 2004. On March 4, 2004, the applicant responded to that decision by requesting, for a second time, that her application be reopened.

The director erroneously accepted the applicant's response to the dismissal of the motion as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, as the director's initial decision to deny the application 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.