



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[SRC 01 166 59700]

Office: Texas Service Center

Date: APR 20 2007

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
Robert P. Wiemann, Chief
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 April 5, 2001. On May 29, 2002, the applicant was requested to submit additional evidence establishing her qualifying residence and physical presence in the United States. 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 August 28, 2002. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen under 8 C.F.R. § 103.5.

The applicant responded to the director's decision on November 19, 2003. The applicant requested that her TPS application be reopened and stated that she did respond to the notice. She furnishes a copy of the documentation she submitted at that time. The applicant also provided additional documentation in support of her claim. It is noted that the applicant's response to the director's denial was received more than one year after the issuance of the director's decision to deny.

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.