



U.S. Citizenship  
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Services

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FILE: [REDACTED] OFFICE: California Service Center Date: **AUG 01 2007**  
[WAC 05 229 73746]

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California 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 claims to be a 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 May 17, 2005. On July 21, 2006, the applicant was requested to submit additional evidence establishing her qualifying residence in the United States. The record indicates that the applicant responded, but it is not clear why the applicant's response was not received by CIS until after the date of the decision. Nonetheless, the director concluded that the applicant had abandoned her application and denied the application on September 6, 2006. As the record is currently constituted the director's decision was technically correct as it was based on the record at the time of the decision.

The applicant responded to the director's decision on September 12, 2006. The applicant requested that her TPS application be reopened and stated she has evidence to demonstrate that she timely responded to the director's request for 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 and issue a decision based on the record as it is now constituted.

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.