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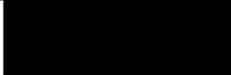
U.S. Citizenship  
and Immigration  
Services

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FILE:



[SRC 01 227 63236]

OFFICE: TEXAS SERVICE CENTER

Date: **APR 02 2008**

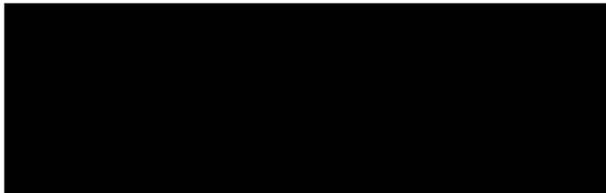
INRE:

Applicant:



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.

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

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 claims to be a citizen of EI 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 31, 2001. On June 28, 2004, the applicant was requested to submit additional evidence establishing her qualifying 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 July 27, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen.

The applicant responded to the director's decision on September 18, 2006. Counsel requested that the applicant's TPS application be reopened because her failure to respond to the request for evidence and the notice of denial were caused by reasons beyond her control, specifically that these documents were not mailed to her address of record. 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 two years after the issuance of the director's decision.

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 returned and the director shall consider the applicant's response as a motion to reopen.

It is noted that the applicant's Form 1-821, Application for Temporary Protected Status, for re-registration, filed on February 25, 2005, [WAC 05 148 77364] was denied by the Director, California Service Center. A subsequent appeal of that denial was dismissed by the AAO on June 12, 2006.

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.