

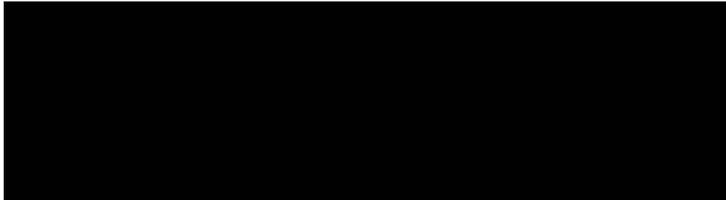
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: Texas Service Center DATE: MAR 21 2008
[SRC 01 202 57456]

INRE: Applicant: [REDACTED]

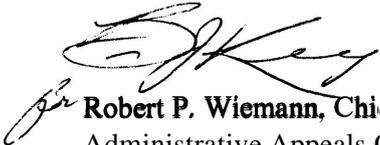
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, 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 stated 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 initial TPS application on May 4, 2001, within the initial registration period. On August 12, 2002, the applicant was requested to submit additional evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant was afforded twelve (12) weeks to submit the required documentation to support her TPS application. 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 January 24, 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 October 18, 2007. The applicant, through counsel, requested that her initial TPS application be reopened and stated that she did reply to the Service's request within the time allowed; however, her counsel at that time sent the requested documents to an incorrect P.O. Box address. 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 four (4) 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 remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the applicant filed a Form 1-821, Application for Temporary Protected Status, on October 22, 2002, under CIS receipt number SRC 03 029 55870, and indicated that she was re-registering for TPS. However, the record does not contain a decision regarding the application.

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.