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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

APR 23 2004

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
[LIN 02 287 50163]

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 for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant is a native and citizen of El Salvador who indicated on her application that she entered the United States in March 2000. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, after determining that the applicant had failed to respond to a request for evidence to establish that she was eligible for TPS at the time she filed the application.

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 application for TPS on September 5, 2002. On January 8, 2003, the applicant was requested to submit a photo identification document and evidence establishing her qualifying residence and physical presence in the United States. The notice was mailed to the applicant at her current address, but was returned unclaimed. On March 5, 2003, the director determined that the applicant had failed to respond to the request to submit evidence to establish her eligibility for TPS at the time she filed the application, as required under 8 C.F.R. 103(b)(12), and issued a Notice of Denial. The director erroneously advised the applicant that she could file an appeal within 30 days.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction in this case, and it may not be appealed to the AAO. Therefore, the case will be remanded and the director shall consider the motion.

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 new decision.