U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 21 2004

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:

[redacted]

PUBLIC COPY

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 M. Gomez for

Robert P. Wiemann, Director
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 matter 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 TPS application on June 18, 2001. On December 16, 2002, the applicant was requested to submit photo identification and additional evidence establishing her qualifying continuous residence and continuous physical presence in the United States.

The director denied the application on March 12, 2003, after determining that the applicant had abandoned her application by failing to respond to the request for evidence. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

Counsel for the applicant filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), on December 18, 2003, more than nine months after the date of issuance of the director's decision.

On appeal, counsel asserts that the delay in the applicant's failure to file the appeal within the 30-day appeal period is reasonable and was beyond the control of the applicant. Counsel asserts that the applicant did not respond to the Notice of Intent to Deny because "she did not understand that she was required to do that." Counsel further asserts that the applicant was confused because the Notice of Intent to Deny requested evidence of continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999, the requisite dates of continuous residence and continuous physical presence for Hondurans, not El Salvadorans. In support of this assertion, counsel submits a photocopy of a Notice of Intent to Deny dated December 16, 2002, requesting photo identification and evidence establishing the applicant's continuous residence since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. This notice is not contained in the record of proceeding. The Notice of Intent to Deny contained in the record of proceeding, however, which is also dated December 16, 2002, requests photo identification and evidence establishing the applicant's continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001—the applicable dates for El Salvadorans. Counsel states that since the applicant is El Salvadoran, and did not enter the United States until June 1, 2001, she did not know how to respond to the letter.

Counsel explains that the applicant went to an immigration representative, Immigration Counseling Outreach Services (ICOS), in Austin, Texas, for assistance, and ICOS sent a motion to reopen to the Texas Service Center without the required fee. Counsel further states that ICOS attempted to file a second Form I-821, Application for Temporary Protected Status, but this form was rejected by the Texas Service Center because the applicant's initial Form I-821 had been denied on March 12, 2003. Counsel submits a photocopy of a motion to reopen from ICOS

dated May 10, 2003, along with a photocopy of a Form I-797 notice dated September 25, 2003, rejecting the applicant's second Form I-821 and Form I-765, Application for Employment Authorization, because her initial Form I-821 had been denied on March 12, 2003.

Counsel also submits the applicant's photo identification and evidence in an attempt to establish the applicant's continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

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 was apprehended on June 1, 2000, by the United States Border Patrol in Calexico, California, when she attempted entry into the United States. She was issued a Form I-862, Notice to Appear, instructing her to appear for a removal hearing before an Immigration Judge in Houston, Texas, at a date to be determined, and released on her own recognizance. The record contains a Form I-200, Warrant for Arrest of Alien, that was issued on June 1, 2000, by the Assistant Chief Patrol Agent, El Centro, California. There is no indication in the record that a removal hearing was ever held.

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.