U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 27 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: 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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 indicates that the applicant filed her Form I-821, Application for Temporary Protected Status, on September 11, 2002. On January 22, 2003, the applicant was requested to provide evidence of nationality and identity. The notice was mailed to the applicant's address of record, but she failed to respond to the notice. On August 4, 2003, the director denied the application after determining that the applicant had abandoned her application by failing to respond to a request for evidence. The director erroneously advised the applicant that she could file an appeal from this decision within 30 days. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. The director's error does not, and cannot, supersede the regulations. Therefore, the appeal must be rejected.

However, in the director's discretion, he may reopen the decision on a Service motion pursuant to 8 C.F.R. § 103.5(a)(5), or excuse the late filing of a new motion under the requirements of 8 C.F.R. § 103.5(a)(1)(i).

It is noted that the applicant, on appeal, provided the requested evidence of identity and nationality. It is further noted that the applicant did not file her Form I-821 during the initial registration period. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record indicates that the applicant filed her application with the Immigration and Naturalization Service, now Citizenship and Immigration Services, on September 11, 2002. Finally, it is noted that the applicant has not provided sufficient evidence to establish continuous residence in the United States since February 13, 2001, or continuous physical presence I the United States since March 9, 2001.

ORDER: The appeal is rejected.