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



U.S. Citizenship
and Immigration
Services

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MI

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

FEB 03 2005

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]

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

DISCUSSION: The application was denied by the Director, California 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.

On appeal, counsel states that the applicant has not abandoned her application. Counsel asserts that the applicant never received the Notice of Intent to Deny because she and her husband have experienced a problem with receiving mail sent to them, and have filed a complaint with the United States Postal Services. Counsel submits a photocopy of United States Postal Service (PS) Form 1510, Mail Loss/Rifling Report, dated January 10, 2004. Finally, counsel asserts that the applicant is eligible for TPS. Counsel submits evidence of identity and nationality and evidence relating to her claim of continuous residence and physical presence in the United States.

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 July 27, 2001. On February 18, 2003, the applicant was requested to provide evidence of identity and nationality and additional evidence of continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The notice was mailed to the applicant at her current address of record, [REDACTED] but she failed to respond to the notice. The director, therefore, denied the application after determining that the applicant had abandoned her application by failing to respond to the Notice of Intent to Deny.

The director erroneously advised the applicant that she could file an appeal from this decision within 30 days. Counsel filed a timely response on January 20, 2004. 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 matter will be remanded for consideration as a motion to reopen.

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 matter is remanded for further consideration and action.