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**U.S. Citizenship
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Services**

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FILE:



Office: Texas Service Center Date: FEB 02 2005

IN RE:

Applicant:



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
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 case 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 initial application on June 28, 2001. On January 17, 2003, and again on February 21, 2003, the applicant was requested to submit additional evidence establishing her qualifying physical presence in the United States. 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 June 9, 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; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. 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.

The applicant responded to the director's Notice of Decision on December 3, 2003. Counsel for the applicant states that the applicant claims that she never received any requests for additional evidence and asserts that there is "clear error in the denial of her application." **It is noted that the applicant's response to the Notice of Decision was received nearly five months after the issuance of the director's decision.**

It is also noted that the record indicates that the applicant responded with a letter that was received at the Texas Service Center on July 11, 2003, stating that she never received any request for evidence. She also submitted additional evidence including medical records and a certificate of title and registration dated November 4, 2000, that was received at the Texas Service Center on October 17, 2003.

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.