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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 29 2005
[WAC 02 105 53671]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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.

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 application on February 4, 2002. On March 27, 2003, the applicant was requested to submit evidence of identity, 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, two photographs, and a complete application. The notice was mailed to the applicant at her address of record, but the record does not contain a response from the applicant.

The director concluded that the applicant had abandoned her application by failing to respond to the notice dated March 27, 2003, and issued a Notice of Denial on April 1, 2004. The director erroneously informed the applicant that she could file an appeal with the AAO within 33 days.

The applicant responded to the Notice of Decision on May 5, 2004. In her response, the applicant states that she didn't receive the Notice of Intent to Deny dated March 27, 2003, because she had moved to Baltimore, Maryland, on October 30, 2002. The applicant states that she notified Citizenship and Immigration Services (CIS) of her change of address on May 5, 2003. She submits a photocopy of a change of address letter dated May 5, 2003, along with a change of address card dated December 3, 2003. The Notice of Intent to Deny was mailed to the applicant's address of record. She did not notify CIS of her address change until May 5, 2003, two months after the issuance of the Notice of Intent to Deny. The applicant also submits additional evidence of identity and additional evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. It is noted that the applicant's response to the Notice of Decision was received at the California Service Center on May 5, 2004, more than 33 days after the issuance of the director's decision.

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 matter will be remanded and the director shall consider the applicant's response as a motion to reopen.



It is noted that the record of proceeding does not contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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 action consistent with the above and entry of a new decision.