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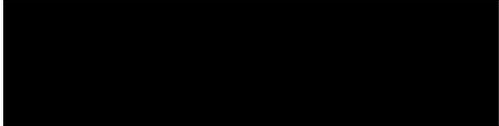
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**U.S. Citizenship
and Immigration
Services**

M

MAR 03 2005



FILE: [REDACTED]
[SRC 01 191 66574]

Office: TEXAS SERVICE CENTER Date:

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
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 claims to be 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 TPS application on April 16, 2001. On February 27, 2003, the applicant was requested to submit two photographs of specified dimensions, and “proof you have properly filed an I-821 Application for Temporary Protected Status during the registration period [sic].” On May 16, 2003, the applicant was requested to submit photo identification or a national identity document bearing a photograph and/or fingerprint. 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 November 6, 2003.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen. The applicant responded to the director’s decision on November 25, 2003; 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.

It is noted that at the time the applicant was initially apprehended on December 1, 1997, and provided with expedited removal, she claimed to be a Mexican citizen. Now, she indicates that she is El Salvadoran; however, fails to present photo identification of her nationality. It is also noted that although she claims entry into the United States in 1997, subsequent to her removal, that she obtained the birth certificate presented in El Salvador in 1998. There is also an unadjudicated Form I-601, Application for Waiver of Ground of Excludability, in the record.

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.