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

M1

[REDACTED]

FILE:

OFFICE: Texas Service Center

DATE: JAN 11 2008

[REDACTED]
[SRC 01 158 55093]
[SRC 04 004 53107 – Motion]

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 Texas Service Center. Any further inquiry must be made to that office.

John H. Vaughan
for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director in Charlotte, North Carolina, and is now before the Administrative Appeals Office (AAO) on a motion to reopen or reconsider. The case will be remanded to the Texas Service Center (TSC) 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 district 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 Form I-821, Application for Temporary Protected Status, with the TSC on March 28, 2001. The application was transferred to the Charlotte District Office on July 8, 2002, because the applicant's fingerprints were found to be unclassifiable. On July 16, 2002, the applicant was requested to obtain criminal record checks from the clerk of the county court for each county in which she had lived since residing in the United States. The district director determined that the applicant did not respond to the July 16, 2002 request and denied the application for TPS on the ground of abandonment, on November 6, 2002. The district director erroneously advised the applicant that she could file an appeal with the AAO by returning a Form I-290B to the Charlotte District Office by December 14, 2002. The district director apparently sent the wrong form to the applicant as well – a Form I-290A, Notice of Appeal to the Board of Immigration Appeals.

The applicant proceeded to submit the Form I-290A to the Charlotte office on November 25, 2002, which generated a response from the TSC Director, dated December 19, 2002, advising the applicant that her case had not been denied. The applicant subsequently received another notice from the TSC, dated August 20, 2003, advising that her TPS application had been denied by the TSC on February 5, 2003. There is no decision or denial notice from the TSC in the file, however, except for a Notice of Decision dated February 4, 2003, denying the applicant's Form I-765, Application for Employment Authorization, on the ground that her TPS application had been denied on November 6, 2002 (the date of the district director's decision in Charlotte, North Carolina). On September 4, 2003, the applicant filed a motion to reopen and reconsider at the Charlotte office, which was transferred to the TSC on September 26, 2003.

The TSC Director erroneously forwarded the motion to the AAO. The AAO has no jurisdiction since the underlying decision was based on abandonment and could not be appealed to the AAO. Furthermore, jurisdiction of a motion to reopen or reconsider rests in "the official who made the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(ii). Since the TSC Director appears to have made the latest decision in this proceeding, the case will be remanded to that official for consideration of the applicant's motion on the merits.

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, Texas Service Center, for further action consistent with the above and the entry of a decision.