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U.S. Citizenship  
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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: [Redacted]  
[SRC 01 191 68803]  
[WAC 08 241 52123 -Motion]

JAN 15 2009

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

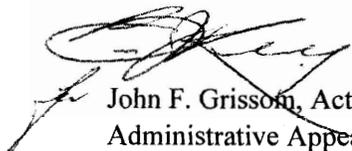
ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grisson, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The case will be remanded.

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.

If all requested 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 April 20, 2001. On September 20, 2003, January 14, 2003, and again on January 27, 2004, the applicant was requested to submit additional evidence establishing her qualifying residence in the United States and to provide photo identification. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Denial on April 27, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen. It is noted that the applicant filed a subsequent re-registration TPS application on February 1, 2005. The Director, California Service Center, dismissed that application on September 8, 2005 because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. On September 29, 2005, the applicant filed an appeal from the denial decision. The Director (now Chief), AAO, dismissed that appeal on September 1, 2006. The applicant filed a subsequent motion which was dismissed by the AAO on August 5, 2008.

In compliance with the director's instructions, the applicant submitted a motion to reopen her initial TPS application (SRC 01 191 68803.) According to counsel, the applicant has established her continuous residence and continuous physical presence in the United States and is therefore eligible for TPS.

The director accepted the motion as an appeal and forwarded the file to AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction on this case, and it may not be appealed to the AAO. Therefore, the case will be remanded and the director shall consider the motion.

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.