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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

M<sub>1</sub>

FILE:

[REDACTED]

Office: FRESNO

Date:

**FEB 24 2010**

[WAC 05 158 72684]

IN RE: Applicant:

[REDACTED]

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

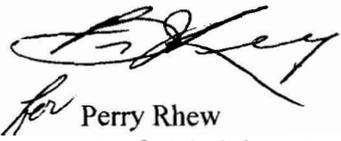
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont 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).

  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Fresno, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant claims to be a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under 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 to appear for a scheduled interview.

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 March 7, 2005. On September 7, 2007, the applicant was requested to appear for an interview at the local office of the United States Citizenship and Immigration Services on September 20, 2007. The director determined that the applicant did not appear as requested, did not submit a change of address, and did not submit a request to reschedule that interview appointment. It is noted that the applicant did submit a re-registration application that contained a new address. However, the appointment notice was sent to applicant's counsel of record as well.

The director erroneously advised the applicant that she could file an appeal from this decision within 30 days. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. The director's error does not, and cannot, supersede the regulations. Therefore, the appeal must be rejected.

However, in the director's discretion, he may reopen the decision on a Service motion pursuant to 8 C.F.R. § 103.5(a)(5), or excuse the late filing of a new motion under the requirements of 8 C.F.R. § 103.5(a)(1)(i).

**ORDER:** The appeal is rejected.