



U.S. Citizenship  
and Immigration  
Services

MI

[Redacted]

FILE: [Redacted]

Office: CALIFORNIA 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.

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 appeal will be rejected.

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 his 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 indicates that the applicant filed his Form I-821, Application for Temporary Protected Status, on September 17, 2002. On February 14, 2003, the applicant was requested to provide evidence of nationality and evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. In response, the applicant provided evidence in an attempt to establish his residence and physical presence in the United States.

On October 9, 2003, the applicant was requested to provide evidence of identity and nationality, additional evidence to establish his qualifying continuous residence and physical presence in the United States, and a certified copy of the final court disposition of his arrest on July 12, 1989, in Los Angeles, California, on the charge of "Transport/Sell Narcotics/Controlled Substance." The applicant was granted until November 9, 2003, to respond to the Notice of Intent to Deny. The applicant did not respond to the notice in a timely manner. His response to the notice was not received at the California Service Center until December 23, 2003, after the Notice of Decision had been issued.

On December 18, 2003, the director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for additional evidence. The director erroneously advised the applicant that he 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).

Although the applicant has not provided a certified copy of the final court disposition of his arrest as requested, this criminal charge may render him ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act.

**ORDER:** The appeal is rejected.