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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A.3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Texas Service Center Date:

DEC 15 2004

IN RE:

Applicant:



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.

Cindy M. Gomez
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 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 reveals that the applicant filed his application for TPS on September 1, 2002. On May 1, 2003, the applicant was requested to submit additional evidence establishing his qualifying residence and qualifying physical presence in the United States for the requisite periods. The applicant was also requested to submit photo identification. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on March 26, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the director's decision on April 21, 2003. The applicant requests that his TPS application be reopened and states that he never received a notice of intent to deny due to abandonment. The applicant further states that his address has been the same since he applied for TPS.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, 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 on the Form I-821, Application for Temporary Protected Status, that the applicant listed his mailing address as [REDACTED] however, on Form I-290B, Notice of Appeal to the Administrative Appeals Office he lists his mailing [REDACTED] It is also noted that the applicant listed his address as [REDACTED] the envelope that he sent to the Texas Service Center (TSC) on August 29, 2002. Further, the applicant submits on appeal a copy of a notice sent to him on February 7, 2003, by the Service Center address [REDACTED]

Additionally, it is also noted that FBI identification record indicates that the applicant was apprehended by the Sheriff's Office, Dalton, Georgia, on February 22, 2003, and charged with "giving false name/false info to police."

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.