



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

OCT 26 2004

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.

Robert P. Wiemann for

Robert P. Wiemann, Director
Administrative Appeals Office

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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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 initial TPS application on April 11, 2001. On June 27, 2002, the applicant was requested to submit photo identification, a birth certificate, and/or a national identity document from his country of origin bearing a photograph and/or fingerprint. The record does not contain a response from the applicant to the request; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Decision denial on August 8, 2002. The director advised the applicant that the decision could not be appealed, but that denial due to abandonment does not preclude the filing of a new petition or application with a new fee, pursuant to 8 C.F.R. 1944 103.2(b)(15).

The applicant responded to the director's Notice of Decision on September 16, 2003. The applicant states that he appeals the decision of August 8, 2002, denying his TPS application, because he never received any notices requesting additional evidence. He states that the only decision he received was on January 30, 2003, which he could not understand. He states that he is submitting additional evidence to demonstrate that he has been residing in the United States. The record, however, contains no additional evidence submitted with the appeal notice. The record indicates that the request for additional evidence and the Notice of Decision were mailed to the applicant's last known address. The record reflects that the applicant informed the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), of his new address when he submitted an application for re-registration on December 2, 2002. The record does not contain an earlier Form AR-11, Alien Change of Address Card, or notification from the applicant that his address had changed. **It is noted that the applicant's response to the Notice of Decision was received more than thirteen months after the issuance of the director's decision.**

The director accepted the applicant's response as an appeal 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.

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.