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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[SRC 03 249 54672]

Office: TEXAS SERVICE CENTER Date: APR 28 2005

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
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 claims to be 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 September 8, 2003. On December 22, 2003, the applicant was requested to submit additional evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. 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 February 13, 2004.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen. The record contains a response received on March 4, 2004, to the director's decision; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the response to the AAO. 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 the motion to reopen is signed by a "Mr. [REDACTED]". The record does not contain any properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing Mr. [REDACTED] or any organization to which he might be affiliated, to represent the applicant. There is no evidence that Mr. [REDACTED] is an accredited representative recognized by the Board of Immigration Appeals. Therefore, it appears that the motion to reopen has not been filed by an affected party. 8 C.F.R. § 103.3(a)(1)(iii)(B).

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.