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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

M1

FILE:

[REDACTED]

Office: California Service Center

Date:

AUG 01 2008

[WAC 01 181 55322]

[WAC 02 214 51981]

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 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, California 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 submit requested court documentation relating to his criminal record.

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 application on April 13, 2001. He filed a subsequent TPS application on June 21, 2002. On October 6, 2003, the applicant was sent a Notice of Intent to Deny, in which he was requested to submit a final court disposition of all criminal arrests in the United States. 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 erroneously advised the applicant that he could file a Notice of Appeal to the AAO.

The applicant, through counsel, asserts that he has never been convicted of a crime. Counsel also provides a communication dated February 25, 2004, from the Los Angeles County Superior Court, which indicates that there is no record of any criminal arrests under the name of [REDACTED]. However, the record of proceedings includes the results of the Federal Bureau of Investigation (FBI) Identification Record fingerprint report, indicating that the applicant was arrested under the name of [REDACTED] in Santa Monica, California.

The record of proceedings also includes a Form I-862, Notice to Appear, dated June 13, 1997, indicating that the applicant was ordered to appear before an immigration judge in Los Angeles, California, as an alien present in the United States who has not been admitted or paroled. However, there is no record of the applicant having actually been ordered removed.

The director 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.

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.