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U.S. Citizenship
and Immigration
Services



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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 23 2005
[WAC 03 078 50905]

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further 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 on January 7, 2003. On December 21, 2003, the applicant was requested to submit additional evidence establishing that: (1) he was eligible for late initial registration; (2) he had continuously resided in the United States since February 13, 2001; and (3) he had been continuously physically present in the United States from March 9, 2001, to the date of filing his application. 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 27, 2004. The director erroneously advised the applicant that he could file an appeal from this decision within 30 days.

The applicant responded to the director's decision on April 8, 2004. The applicant requested that his TPS application be accepted because during the initial registration, his mother did not have the money to pay the registration fee. The applicant also provided additional documentation in an effort to establish his qualifying residence in the United States. It is noted that the applicant's response to the director's denial was received 41 days after the issuance of the director's decision.

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 the applicant's parent, under penalty of perjury, initially stated that the applicant had entered the United States on January 20, 2002; subsequently filed applications now indicate January 20, 2001. It is also noted that documentation submitted now predates the same copies of initial documentation submitted regarding the applicant's vaccinations. Other documentation appears altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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.