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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:

[EAC 01 257 53947]

Office: VERMONT SERVICE CENTER

Date: DEC 20 2005

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

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 determined that the applicant failed to respond to a request for evidence to establish his eligibility for TPS. The director, therefore, denied the application.

If all requested 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 August 20, 2001. On October 15, 2002, and April 18, 2003, the applicant was requested to submit additional evidence establishing his qualifying residence 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 issued a Notice of Denial on June 13, 2003.

In compliance with the director's instructions, the applicant submitted a motion to reopen his case. On motion, the applicant states that he was confused about the decision.

The director accepted the motion as an appeal and forwarded the file to AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction on this case, and it may not be appealed to the AAO. Therefore, the case will be remanded and the director shall consider the motion.

Beyond the director's decision, it is noted that according to a Federal Bureau of Investigation (FBI) fingerprint report, the applicant was arrested by the Border Patrol on March 30, 1980; and that he was granted voluntary departure from the United States.

As always in these proceedings, the burden of proof remains solely on the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for entry of a new decision.