



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

*ML*



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2005  
[WAC 01 243 51172]

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, 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 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 indicates that the applicant filed his Form I-821, Application for Temporary Protected Status, on June 19, 2001. On November 19, 2003, the applicant was requested to provide certified copies of the final court dispositions of the following charges:

1. Date of charge: February 16, 1994  
Law Enforcement Agency: Police Department, Montebello, California  
Charge: Petty Theft
2. Date of Charge: July 27, 1996  
Law Enforcement Agency: Police Department, Los Angeles, California  
Charge: 12403 7(a)(8) PC - Illegal Use of Tear Gas, a felony

The notice was sent to the applicant at his address of record, but he failed to respond to the notice.

On February 26, 2004, the director denied the application because the applicant had abandoned his application by failing to respond to a request for additional evidence. The applicant was provided with Form M-188 relating to motions to reopen based on an abandonment denial. On March 11, 2004, the applicant filed an appeal to the denial of the application. The applicant states that he never received the director's request for additional evidence. Nevertheless, 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 matter is remanded to the director for further action consistent with the above and entry of a new decision.