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**U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 21 2005

IN RE:

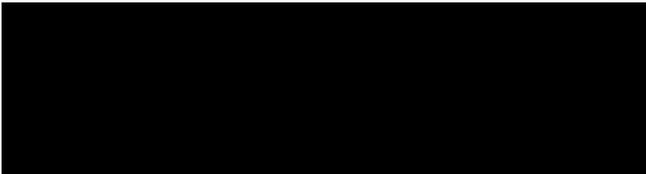
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. 1254

ON BEHALF OF APPLICANT:



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 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.

On appeal, counsel asserts that the applicant was represented by an individual who was not authorized to practice law, and the individual failed to correctly complete the application and did not notify the applicant of the Service's request for additional evidence. Counsel submits additional 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 reflects that the applicant filed his TPS application on February 15, 2002. In a notice of intent to deny dated March 26, 2003, the applicant was requested to submit evidence of his nationality, police clearance, and court dispositions of his arrests. The applicant was granted 30 days from the date of the request in which to submit the requested information. Because no response was received from the applicant, the director denied the application on May 19, 2003.

The director erroneously advised the applicant that he could file an appeal from this decision within 30 days. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. The director's error does not, and can not, supersede the regulations. 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 and entry of a decision.