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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2005
[WAC 01 174 51463]

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.

Cindy M. Gomez for

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 action.

The applicant states that he 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 his request to submit the final court disposition of his arrest.

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 of proceeding contains the Federal Bureau of Investigation fingerprint results report indicating that [REDACTED] was arrested on August 19, 1988, in Los Angeles, California, for attempted burglary, and that he was subsequently convicted of burglary in the first degree.

On June 12, 2003, the applicant was requested to provide police clearances from every city where he had lived since arriving in the United States, and to provide a copy of the final court disposition of any arrests in the United States. The director denied the application due to lack of prosecution on August 28, 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. 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 has provided a letter from the Superior Court of California, County of Los Angeles, dated September 10, 2003, indicating that no arrest records were found under the name of [REDACTED] with a date of birth of January 15, 1959 (the applicant's purported identity at this time). However, at the time of the arrests, it appears that the applicant was using the identity of [REDACTED] with a date of birth of January 8, 1961.

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.