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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[EAC 01 197 55286]

Office: VERMONT SERVICE CENTER

Date: JUN 08 2005

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, Vermont 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 stated to be 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 regarding his criminal record.

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 initial Form I-821, Application for Temporary Protected Status, on May 14, 2001. On January 24, 2002, the applicant was requested to submit court documentation relating to his criminal record. The applicant failed to respond to the request; therefore, the director concluded that the applicant had abandoned his application and denied the application on July 15, 2002. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the director's decision on March 14, 2003, requesting that his application be reopened and reconsidered. The director declined to reopen the application in a decision dated July 24, 2003. The applicant responded to that decision on August 25, 2003.

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 original decision to deny the applicant's Form I-821 was based on abandonment, the AAO has no jurisdiction over this case. *See* 8 C.F.R. 103.5(a)(6). Therefore, the case will be remanded to the director for further consideration and action.

It is noted that the applicant has submitted court documents indicating that he was adjudicated guilty of Grand Theft in the Circuit Court, Eighteenth Judicial Circuit, Brevard County, Florida, on September 8, 1998, for which he was sentenced to a term of imprisonment of 118 days.

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 consideration and action.