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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2005
[WAC 01 282 57748]

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 to the director for further action.

The applicant claims to be 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 reveals that the applicant filed his application on August 17, 2001. The Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, indicates the following offenses:

- (1) Arrested on November 17, 1983, in Los Angeles, California, for burglary. The FBI report shows that the applicant was subsequently convicted of this offense.
- (2) Arrested on December 13, 1983, in Glendale, California, for burglary.
- (3) Arrested on January 13, 2003, in Los Angeles, California, for driving under the influence of alcohol/drugs, and driving with .08 percent blood alcohol level or more. The applicant subsequently furnished the final court disposition of this offense indicating that he was convicted of driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor, on January 22, 2003.
- (4) Arrested on September 13, 2003, in Los Angeles, California, for possession of a narcotic controlled substance.

In a notice of intent to deny dated March 17, 2004, the applicant was requested to submit the final court disposition of all arrests. 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 Decision on May 17, 2004. The director erroneously advised the applicant that he could file an appeal from this decision within 30 days.

The applicant appealed the director's decision on June 22, 2004. The applicant stated that he did not agree with the decision because he had already sent the evidence requested. He submitted a copy of the court's final disposition for the offense listed in No. 3 above. It is noted, however, that there is no evidence in the record that the applicant responded to the director's request of March 17, 2004.

On July 1, 2004, the director rejected the appeal as improperly filed because the Form I-290B, Notice of Appeal, was received after 30 days of the date of his notice. He advised the applicant that the previous denial decision will remain unchanged.

On August 13, 2004, the applicant filed a motion to reopen his case and asserts that he did in fact send a complete court disposition within the 30-day period. He submits another copy of the court disposition for the offense listed in No. 3 above.

The director accepted the applicant's motion to reopen and forwarded the file to the AAO. However, as the initial decision by the director was based on abandonment, the AAO has no jurisdiction over a subsequent appeal and/or motion. Therefore, the case will be remanded to the director.

It is noted in the record that an Order to Show Cause and Notice of Hearing, Form I-221, was issued on February 1, 1992, in Los Angeles, California, based on the applicant's entry into the United States without inspection.

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.