

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

MI

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 03 2005**
[WAC 01 263 61165]

NAME: 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
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 matter 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 reveals that the applicant filed his application on July 30, 2001. On November 23, 2003, the applicant was requested to submit evidence of nationality and the final court disposition of his arrest in Los Angeles, California, on June 24, 2001, on the charge of "driving under the influence of alcohol," in violation of section 23152(a) VC, a misdemeanor. The notice was mailed to the applicant at his address of record, the same address to which the Notice of Decision was mailed, but 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 Denial on April 2, 2004. The director erroneously advised the applicant that he could file an appeal with the AAO within 33 days.

The applicant responded to the Notice of Decision on May 5, 2004. The applicant states that he never received the director's request for evidence dated November 23, 2003. He further states that it will be difficult for him to submit a court disposition and evidence of nationality. He explains that he has gone to the Salvadoran Consulate in Los Angeles to request a passport, but was told that he needed his national identification card (cedula) in order to get a passport. The applicant states that he lost his cedula, and he cannot get a cedula without going back to El Salvador, but he doubts that he would be granted advance parole by Citizenship and Immigration Services (CIS) for that reason alone.

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 decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the matter will be remanded and the director shall consider the applicant's response as a motion to reopen.

To date, the applicant has failed to submit a national photo identification document or the final court disposition of his arrest on June 24, 2001.

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 for further action consistent with the above.