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FILE: [REDACTED]  
[WAC 01 240 51309]

Office: CALIFORNIA SERVICE CENTER

Date: **NOV 03 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and denied again 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 applicant submitted his Form I-821, Application for Temporary Protected Status, on May 9, 2001. On January 10, 2004, the director issued a notice requesting that the applicant submit the required \$50.00 fingerprint fee or proof that he had already paid the fingerprint fee.

On March 5, 2004, the director concluded that the applicant had failed to submit the required fee and denied the application.

However, the applicant did respond to the Notice of Intent to Deny dated January 10, 2004. His response was received at the California Service Center on March 3, 2004. In response to the notice, the applicant submitted: photocopies of notices acknowledging receipt of his Form I-821 and his Form I-765, Application for Employment Authorization, and a photocopy of his Form I-797, Fingerprint Notification, dated December 17, 2002. The notice instructed the applicant to appear at the Application Support Center in Gardena, California, on February 4, 2003, to be fingerprinted. It is noted that the record contains a photocopy of a Continental Express money order payable to "B.C.I.S." (Bureau of Citizenship and Immigration Services, now CIS) dated February 26, 2004. The money order was endorsed at the California Service Center on March 10, 2004.

CIS records indicate that the service center director reopened the matter on March 17, 2004, and waived the \$110.00 filing fee for the motion to reopen.

On April 2, 2004, the director denied the application due to abandonment, because the applicant failed to appear to be fingerprinted on February 4, 2003, as scheduled, or to request that his fingerprint appointment be rescheduled.

If an individual requested to appear for fingerprinting or for an interview does not appear, CIS does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or if the applicant or petitioner has not withdrawn the application or petition, 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).

As stated previously, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on April 2, 2004. The director advised the applicant that, while the decision could not be appealed, he could file a motion to reopen within 30 days.

The applicant responded to the Notice of Decision on April 23, 2004. The applicant submitted a photocopy of the fingerprint notice dated December 17, 2002; a photocopy of Form EOIR-26A, Appeal Fee Waiver

Request; a photocopy of the Notice of Intent to Deny dated January 10, 2004; a photocopy of the endorsed money order in the amount of \$50.00; and, photocopies of postal receipts indicating that mail was received at the California Service Center on March 2, 2004.

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.

It is noted that the record of proceeding, as it is presently constituted, does not contain an official Salvadoran photo identification document to establish the applicant's identity. It is further noted that, although the applicant apparently received the fingerprint appointment notice dated December 17, 2002, he did not appear to be fingerprinted as scheduled, nor has he requested that his fingerprint appointment be rescheduled.

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 and entry of a new decision.