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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 18 2005**
[WAC 01 186 57141]
[WAC 02 286 53928]

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 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 both applications 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 an initial Form I-821, Application for Temporary Protected Status, on April 23, 2001. The applicant filed a second Form I-821 on August 8, 2002. On June 28, 2004, the applicant was requested to submit evidence to establish his nationality and additional evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. 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 September 7, 2004. The director erroneously advised the applicant that he could file an appeal with the AAO within 30 days.

The applicant responded to the Notice of Decision on October 5, 2004. The applicant submits a letter from his mother, [REDACTED] CIS registration number [REDACTED] which she states that the applicant has lived with her since her arrival in the United States on January 22, 2001. She further states that the applicant has not worked since his arrival in this country because he didn't have an employment authorization document. Ms. [REDACTED] submits: a photocopy of a pay statement from Mr [REDACTED] Inc., location unknown, dated June 24, 2003; photocopies of her 2000, 2001, and 2002 Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return; and, photocopies of her 2000 and 2002 IRS Forms W-2, Wage and Tax Statement.

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 applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant's mother's documents do not establish the applicant's qualifying continuous residence and continuous physical presence. The applicant has also failed to submit an official photo identification document to establish his identity.

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.