



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: NOV 30 2005

[WAC 02 140 51875]

IN RE:

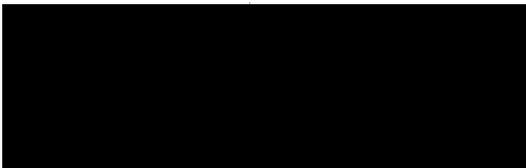
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.

for 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 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 March 20, 2002. On February 14, 2003, the applicant was requested to provide documentation establishing his nationality and identity. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on October 20, 2003. The director erroneously advised the applicant that he could file an appeal from this decision within 30 days.

Counsel responded to the director's decision on November 13, 2003. Counsel states that the applicant lost his birth certificate, he needs additional time to obtain a duplicate birth certificate from his country, and he will submit the birth certificate within the next 30 days. It is noted that, to date, no additional evidence has been provided.

The director accepted the applicant's response as an appeal 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 case will be remanded and the director shall consider the applicant's response as a motion to reopen.

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 and entry of a decision.