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**U.S. Citizenship
and Immigration
Services**

MI

FILE: [REDACTED]
[SRC 02 107 54429]

Office: TEXAS SERVICE CENTER Date: SEP 02 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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, on July 1, 2003, due to abandonment. The applicant filed an untimely motion to reopen on October 31, 2003. In a decision dated January 13, 2004, the service center director determined that the motion had been untimely filed, did not meet the requirements of a motion to reopen, and, therefore, denied the motion to reopen. The applicant filed another motion on February 12, 2004. The matter is now before the Administrative Appeals Office (AAO) on motion. The case will be remanded.

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 regarding his arrest.

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).

A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. § 103.5(a)(6).

The record reveals that the applicant filed his initial TPS application on February 12, 2002. On May 12, 2003, the applicant was requested to submit additional evidence including the final court disposition(s) and arrest disposition(s) for the following criminal charge(s) that appeared on his Federal Bureau of Investigation (FBI) fingerprint results report:

- (1) On March 18, 2000, the applicant, under the name of [REDACTED] was arrested by the Carrollton, Texas, Police Department, Case Number [REDACTED] and charged with "ASSLT CAUSES BODILY INJURY: FAMILY MEMBER."

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 July 1, 2003.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days. The applicant responded to the director's decision on October 31, 2003. The director considered the motion and determined that it had been untimely filed and did not meet the requirements of a motion to reopen. Therefore, the director dismissed the motion to reopen on January 13, 2004.

In response to this denial, on February 12, 2004, the applicant filed another motion to reopen. However, as the director's initial decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the motion will be remanded for further consideration.

It is noted that on motion, the applicant failed to submit any evidence relating to the criminal charges against him.

It is also noted that the applicant failed to submit sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The Social Security number provided on the earnings statements dated in 2000 and 2001 differs from the applicant's Social Security number as indicated on the photocopy of his Social Security card and on his TPS applications. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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 for further action in accordance with the above.