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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED]  
[SRC 01 167 59620]

Office: TEXAS SERVICE CENTER Date: **SEP 12 2006**

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:

[REDACTED]

**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, due to abandonment on September 9, 2002. The applicant filed a motion to reopen that was dismissed by the service center director on March 24, 2003. The applicant obtained counsel and on September 8, 2003, filed a motion to reopen/reconsider, alternatively to be considered as a request for *sua sponte* reopening. The matter is now before the Administrative Appeals Office (AAO). 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 initially 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 initial TPS application on April 4, 2001. On May 28, 2002, the applicant was requested to submit photo identification, or a national identity document bearing a photograph and/or fingerprint. 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 September 9, 2002.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen. On March 10, 2003, the applicant responded to the director's decision. The applicant stated that he did not receive any letter asking for additional evidence. In support of the motion, the applicant submitted a photocopy of the biographic pages of a passport issued on December 17, 2002, by the El Salvadoran Consulate General, Houston, Texas. He also submitted a receipt notice for his Form I-765, Application for Employment Authorization, dated September 12, 2002, and mailed to his new address on October 22, 2002.

On March 24, 2003, the service center director dismissed the motion, stating that the re-registration application filed on September 12, 2002, "indicates the same address as the initial I-821 [Application for Temporary Protected Status] and I-765." The decision also states: "The evidence does not overcome the grounds stated for denial because [blank]".

It is noted that the applicant did submit on motion a national identification document, (although not issued until December 17, 2002), and that the applicant's apartment number had changed, and was, therefore, not the same address as indicated on the initial applications.

Following the service center director's decision of March 24, 2003, the applicant obtained counsel and filed a new motion to reopen/reconsider that was received by the Texas Service Center on September 8, 2003.

Counsel offers an explanation for the applicant's failure to timely provide his new address and makes reference to the submission of the national photo identification.

There is no appeal from a denial due to abandonment. 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).

In this case, the director denied the original application due to abandonment. Since the original decision was not appealable to the AAO, the AAO has no jurisdiction to consider the current motion from the director's denial of the subsequent Motion to Reopen. Therefore, the motion must be remanded to the director for further consideration and action.

It is noted that on September 8, 2003, counsel for the applicant submitted an additional TPS application, marked as an application for re-registration. This package contains an affidavit from the applicant explaining the issue surrounding his change of address, and containing evidence of his nationality, continuous residence, and continuous physical presence during the requisite periods.

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.