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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 23 2005
[WAC 01 173 57770]

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.


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 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.

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 TPS application on April 9, 2001. On February 18, 2004, the applicant was requested to submit a copy of his registered birth certificate along with a certified English translation, and a copy of a court-issued document that shows a name change. 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 June 14, 2004. 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 Notice of Decision by filing a motion to reopen his case on July 6, 2004. The applicant requested that his TPS application be reopened and that he be allowed the opportunity to respond to the director's request.

The director accepted the motion as an appeal and forwarded the file to the AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

As the director's decision was based on abandonment, the AAO has no jurisdiction on this case. Therefore, the case will be remanded and the director shall consider the motion.

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 a new decision