



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

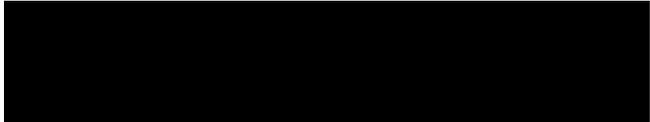
Date: **MAR 27 2006**

[SRC 01 189 70572]

[MSC 05 228 11623, Motion]

IN RE:

Applicant:



APPLICATION:

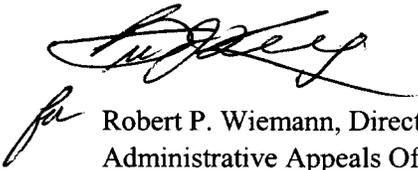
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and 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 initial TPS application during the initial registration period on April 19, 2001. On December 3, 2002, the applicant was requested to submit additional evidence establishing his identity and nationality, such as a State-issued photo identification or a national identity document from his country of origin 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 January 8, 2003.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen. The applicant responded to the director's decision; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. 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. It is noted that this motion was received more than two years after the denial of the initial TPS application.

It is also noted that the records of Citizenship and Immigration Services reflect that the applicant filed another Form I-821, Application for Temporary Protected Status, on March 13, 2005, the same date that this motion was filed. The record as currently constituted does not contain that Form I-821, or any decision regarding that application.

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.