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

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FILE:

[REDACTED]

Office: Texas Service Center

Date:

SEP 06 2006

[SRC 02 050 56307]

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, Chief
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 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 application on November 30, 2001. On April 21, 2003, the applicant was requested to submit additional evidence establishing his qualifying physical presence in the United States, evidence of identity and nationality, and photo identification. 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 August 9, 2003.

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 the applicant applied for asylum on March 7, 1999, and was granted voluntary departure until March 31, 2000. It is also noted that the record contains an appeal to the Board of Immigration Appeals (BIA) on March 28, 2000. Those proceedings were administratively closed on June 26, 2001, to allow the applicant to apply for TPS. This order, however, did not convey any implicit eligibility for TPS, as it specifically states "may be eligible to apply for TPS."

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.