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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 30 2007  
[WAC 05 278 70634]  
[WAC 01 227 55742]

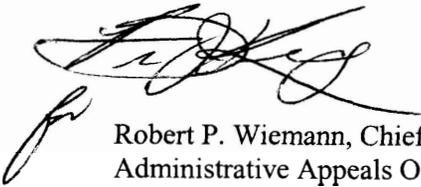
IN RE: Applicant: [REDACTED]

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further 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 record reveals that the applicant filed a TPS application during the initial registration period on March 29, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 227 55742. The director denied that application on December 10, 2003, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on January 11, 2002. On January 13, 2004, the applicant filed a motion to reopen the director's decision under CIS receipt number WAC 04 069 53114. That motion remains unadjudicated by the director.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on July 5, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on September 22, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel asserts that the applicant's [initial] TPS application was not denied on December 10, 2003, but, in fact, was reopened on December 9, 2003, and that the applicant appealed the previous decision of the director and the appeal is pending. To support his claim, counsel submits a copy of Form I-797 advising the applicant: "After review, we have reopened the above application or petition [Form I-821, Application for Temporary Protected Status, WAC 01 227 55742], or reconsidered the decision previously issued. You will receive a notice under separate cover once all action has been considered." Counsel also submits a CIS Case Status computer search, printed on October 18, 2005, regarding current status of the TPS application (WAC 01 227 55742) indicating: "On December 9, 2003, this case was reopened on a BCIS motion, and the case is now in process. It is taking between 180 and 200 days for us to process this kind of case. We will mail you a decision as soon as processing is complete."

As noted above, the applicant filed a motion to reopen the initial TPS application. That motion must be addressed by the director before a decision is made on the applicant's second TPS application [WAC 05 278 70634]. Additionally, it appears that the BCIS motion to reopen or reconsider also remains pending. Therefore, the director's decision to deny the second TPS application will be withdrawn.

As the director's initial 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(s).

It is noted that the record indicates that the applicant subsequently was fingerprinted and the Federal Bureau of Investigation fingerprint results report dated July 28, 2005, does not reflect a criminal record.

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.