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

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FILE: [REDACTED]
[LIN 02 251 51533]

Office: DENVER

Date: MAY 01 2007

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: 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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Denver District Office, 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 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 district director denied the application for TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, due to abandonment, for failure to respond to a request for evidence to establish his eligibility for TPS.

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 July 31, 2002. On March 17, 2003, the applicant was requested to submit the final court dispositions related to his arrest on May 18, 2001, for prostitution and trespassing. 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 September 18, 2003.

In compliance with the district director's instructions, the applicant submitted a motion to reopen his case on September 28, 2003. On motion, the applicant requested that his TPS application be reopened. According to the applicant, he never received any request for more documents.

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

As the district director's decision was based on lack of prosecution, the AAO has no jurisdiction on this case, and it may not be appealed to the AAO. 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 district director for further action consistent with the above and entry of a decision.