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**U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 16 2007**
[WAC 02 035 57739]

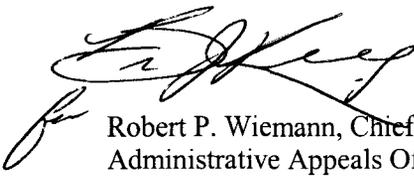
IN RE: Applicant: [REDACTED]

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 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 director denied the application after determining that the applicant had abandoned his application by failing to respond to his request to submit the final court disposition of his arrest.

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 of proceeding contains the Federal Bureau of Investigation (FBI) fingerprint results report indicating that the applicant was arrested on January 25, 1994, in Los Angeles, California, for the felony offense of "spouse beating." In a Notice of Intent to Deny dated February 28, 2004, the applicant was requested to provide a certified copy of the final court disposition of this arrest. 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 April 21, 2004. The director erroneously advised the applicant that he could file an appeal from this decision within 30 days.

The applicant responded to the director's decision on June 1, 2004. The applicant requested that his TPS application be reopened. He submitted a letter dated May 20, 2004, from the Superior Court of California in Glendale indicating that the court has no record of an arrest regarding [REDACTED]. It is noted that the applicant's response was received approximately 41 days after the issuance of the director's decision.

The director accepted the applicant's response as an appeal and forwarded the file to the AAO. However, 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.

The record indicates that the applicant was born on April 18, 1979. The applicant was 14 years of age at the time of the alleged felony arrest on January 25, 1994. It is noted that the applicant and his father, [REDACTED] (file number [REDACTED]), born on October 18, 1957, share the same FBI number [REDACTED]. File [REDACTED] contains the FBI fingerprint results report indicating that the applicant's father was, in fact, the person arrested for this offense.

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.