U.S. Department of Homeland Security
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Washington, DC 20536

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U.S. Citizenship and Immigration Services

[redacted]

APR 23 2004

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
[LIN 02 287 50304]

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States on August 22, 2000. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, after determining that the applicant had failed to respond to a request for evidence to establish that he was eligible for TPS at the time he filed the application.

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 application for TPS on September 5, 2002. On January 18, 2003, the applicant was requested to submit evidence establishing his qualifying residence and physical presence in the United States. The notice was mailed to the applicant at his current address, but was returned unclaimed. On March 13, 2003, the director determined that the applicant had failed to respond to the request to submit evidence to establish his eligibility for TPS at the time he filed the application, as required under 8 C.F.R. 103(b)(12), and issued a Notice of Denial. The director erroneously advised the applicant that he could file an appeal within 30 days.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction in 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 director for further action consistent with the above and entry of a new decision.