U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 22 2004

IN RE: Applicant: [redacted]
a.k.a [redacted]
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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 N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 regarding his numerous criminal arrests.

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 TPS application on May 2, 2002. On August 9, 2002, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant was also asked to submit photo identification or a national identity document bearing a photograph and/or fingerprint. In addition, the service center director requested final court dispositions for all arrests identified in the applicant's Federal Bureau of Investigation (FBI) fingerprint results report, and listed in the Notice of Intent to Deny for the applicant's reference. The director informed the applicant that it appeared he had been convicted of two or more misdemeanors or one or more felonies, and might, therefore, be ineligible for TPS.

The record does not contain a timely response from the applicant; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Decision to Deny and Revoke on November 2, 2002. The director advised the applicant that, while a denial due to abandonment could not be appealed, the applicant could file a motion to reopen pursuant to the regulations at 8 C.F.R. § 103.5.

The applicant responded to the Notice of Decision to Deny and Revoke on December 15, 2003. The applicant states that he had sent the required documentation and provided a copy of the USCIS.gov printout reflecting the receipt of his materials on June 3, 2003. The applicant does not provide any additional documentation in support of his claim. **It is noted that the applicant's response to the denial notice was received more than one year after the issuance of the director's decision.**

The documentation referred to by the applicant consists of his response to the Notice of Intent to Deny received on June 3, 2003, after the director had already issued the Notice of Decision to Deny and Revoke. In this response, the applicant provided a receipt dated February 13, 2003, from the Police Department, New York, New York, Public Inquiry and Request Section, for issuance of a Good Conduct Certificate, and a Criminal History Search dated February 13, 2003, indicating no record, "based solely on New York City Police Department, environs of New York only." The FBI report did not indicate that the applicant had been arrested or confined in New York City, but rather in other locations in New York State. The applicant has not presented final court dispositions for all of the charges related to his fingerprints.

It also is noted that the applicant failed to provide sufficient evidence to establish his qualifying continuous residence and continuous physical presence during the requisite time periods, and did not submit the required photo identification or a national identity document.

It also is noted that the applicant filed a subsequent TPS application on September 16, 2002, that has not been adjudicated.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen 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.

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.