U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 2 2 2004

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.

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.

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 on April 5, 2002, and the only documentation submitted with the initial application was a birth certificate with translation. On January 28, 2003, 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 requested to submit evidence of his nationality, and photo identification. In addition, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The notice of intent to deny further stated: "[o]ur records indicate that you have an arrest, conviction, or confinement," and requested certified copies of arrest records and final court dispositions. 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 April 1, 2003. The director advised the applicant that he could not appeal the decision but that he could file a motion to reopen within 30 days.

Counsel for the applicant responded to the director's Notice of Decision on September 29, 2003. It is noted that counsel did not submit the response within the required timeframe. Counsel states that the applicant:

> contests the 9/8/03 decision of the Texas Service Center to return his application for TPS re-registration, as well as the underlying 4/1/03 denial of his initial TPS application referenced in the 9/8/03 notice.

Counsel further states that the applicant's "permanent service record" is sufficient to establish eligibility, and notes that the most recent employment authorization document (EAD), valid through September 9, 2003, was issued under category A12. Counsel asserts that an inference should be drawn from this categorization that the applicant held valid TPS status. Counsel also submits the Form I-797, notice returning the re-registration application, and a photocopy of the applicant's EAD card indicating approval under category A12 (approval as a TPS registrant), valid from February 20, 2003 through September 9, 2003.

It is noted that the director indicated that the applicant had an arrest, conviction or confinement record. As currently constituted, this record of proceedings does not contain any reference to an arrest, conviction or confinement record. While it is possible that such a record existed by the time of the director's January 28, 2003, notice of intent to deny, that arrest information is not contained in this permanent record of proceeding.

It is further noted that the notice of intent to deny specified that the applicant should provide evidence of his eligibility for late registration, after September 9, 2002. The notice referenced the receipt number pertaining to the applicant's initial filing; the initial filing is clearly date-stamped within the initial registration period, as of April 5, 2002. The applicant filed his initial TPS application during the initial registration period.

In addition, the director accepted the applicant's response as an appeal and forwarded the file to the AAO. When the director's decision is based on abandonment, ordinarily the AAO has no jurisdiction over the case. However, the requests made by the director do not reflect a review of the evidence contained within the record. Due to the circumstances surrounding the review of this application, the director's decision will be withdrawn and the case will be remanded. The director may request any evidence deemed necessary to assist her with the determination of the applicant's eligibility for TPS.

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.