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 2 6 2004

IN RE: Applicant: [redacted]
a.k.a. [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 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 TPS application on August 27, 2001. On January 18, 2003, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record does not contain a response from the applicant to the request; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Decision to Deny and Revoke on March 25, 2003. The director advised the applicant that the decision could not be appealed, but that the applicant could file a motion to reopen pursuant to the regulations at 8 C.F.R. § 103.5.

The applicant responded to the director's Notice of Decision on December 30, 2003. The applicant states that he has all the evidence necessary to be approved for employment authorization. The applicant states that on October 4, 2003, he received a Notice of Action informing him that his employment authorization was not being renewed because his initial TPS application had been denied. The applicant asserts that he never received the denial notice or a notice requesting additional evidence to establish his eligibility for TPS. The applicant provides additional documentation in support of his claim. It is noted that the initial application and the receipt notices from the Immigration and Naturalization Service (INS) and Citizenship and Immigration Services (CIS) indicate the applicant's zip code as [redacted] The Notice of Intent to Deny and the Decision to Deny and Revoke, however, were both mailed to the applicant's street address, but list the zip code as [redacted] [the zip code as provided by the applicant only on his November 2002 re-registration application]. According to published zip codes, the correct zip code for the applicant's street address is, in fact, [redacted] **It is noted that the applicant's response to the Notice of Decision was received more than nine months after the issuance of the director's decision.**

It also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence or continuous physical presence during the requisite time periods.

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.

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.