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 26 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: 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 The director's decision will be withdrawn and the case will be remanded for further consideration and action.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 appear for scheduled fingerprinting.

The record of proceedings includes a Form G-28, Notice of Entry of Appearance as Attorney or Representative, filed by of McDaniel & Associates, Dallas, Texas. Ms. indicates that she is representing the applicant at his sole request and is very familiar with this case. However, the U.S. Department of Justice, Executive Office for Immigration Review, Recognition and Accreditation Roster does not list either Ms. or McDaniel & Associates as recognized entities. Therefore, the applicant will be considered as self-represented. In addition to the signature of Ms. the applicant has also signed the Form I-290B, Notice of Appeal, and therefore, the appeal will be considered as properly filed.

The regulations at 8 C.F.R. § 103.2(e)(1), (2), and (4) describe the requirements for fingerprinting that the applicant must meet in order to comply with the requirements for this type of benefit application.

If all requested 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). This regulation further provides that an application shall be considered abandoned and shall be denied if: an individual requested to appear for fingerprinting does not appear; Citizenship and Immigration Services (CIS) does not receive his or her request for rescheduling by the date of the fingerprinting appointment; or, the applicant has not withdrawn the application.

The regulation at 8 C.F.R. § 244.9(4)(c) states, in pertinent part:

> *Failure to timely respond.* Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

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 16, 2001, and filed subsequent applications marked as re-registration applications on September 12, 2002, and August 11, 2003. On January 24, 2003, the applicant was requested to submit additional evidence establishing his continuous residence and continuous physical presence in the United States during the requisite periods. The file copy of this notice does not include the address to which it was mailed, and the record does not contain a response to this request. On May 1, 2003, the applicant was requested to submit additional evidence establishing his

continuous residence and continuous physical presence in the United States during the requisite periods. The record contains no response to this notice.

On November 10, 2003, the director issued a Notice of Decision to Deny, informing the applicant that his TPS application had been deemed abandoned and was denied due to the applicant's failure to appear for scheduled fingerprinting. The director advised the applicant that, while the decision 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 timely responded to the Notice of Decision to Deny on December 3, 2003. The applicant requests that his case be reopened. He states that he never received the fingerprint notification, and does not know why. He states that he needs the employment authorization in order to support his family. The applicant also resubmits photocopies of his employment authorization card, his Texas identification card, and a receipt notice for the August 11, 2003, application for employment authorization extension.

It is noted that the Notice of Intent to Deny dated May 1, 2003, was mailed to the address originally provided by the applicant in his initial August 16, 2001 application. However, the applicant had provided the Immigration and Naturalization Service (INS), now CIS, with a new address on his re-registration application submitted on September 12, 2002. CIS records reflect, however, that no change of address was logged from August 2001 until May 1, 2003. It is unclear why the change of address was logged into the CIS database on May 1, 2003, yet the Notice of Intent to Deny was mailed to the applicant's previous address. Further, the record does not contain a copy of the Fingerprint Notification filed contemporaneously with its issuance to the applicant, in order to determine the address to which the notification was mailed. The photocopies of the Fingerprint Notification contained in the record were reprinted on November 10, 2003, and December 11, 2003, and contain the applicant's current address.

In addition, it is noted that the applicant had been previously fingerprinted. The record includes the INS letter dated September 5, 2001, acknowledging receipt of the applicant's fingerprint fee. CIS records reflect that the applicant was initially scheduled for fingerprinting on October 11, 2001. The Federal Bureau of Investigation (FBI) fingerprint results report processed by the FBI on October 31, 2001, indicated that the applicant did not have a criminal or other record.

Based on the foregoing combination of factors (the applicant's reporting for fingerprinting in 2001, the change of address, and the failure of CIS to send the Notice of Intent to Deny mailed on May 1, 2003, to the new address), the application should not have been denied for abandonment for failure to appear for required fingerprinting. Therefore, the applicant has overcome the service center director's sole reason for denial.

However, the applicant has not submitted sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. It is noted that the applicant's birth certificate indicates that it was issued in El Salvador on May 2, 2001. The applicant has not explained how he obtained this document after his stated date of entry into the United States. The remainder of the evidence submitted consists of: copies of the applicant's employment authorization cards; correspondence from INS and CIS; the applicant's State of Texas Identification Card, that provides a different address for the applicant and that expires on September 22, 2008; and, a sworn employer's affidavit, dated July 28, 2001, that does not fully conform to the provisions of 8 C.F.R. § 244.9(a)(2)(A) through (D).

The director's decision will be withdrawn and the case will be remanded. The director may request any evidence deemed necessary to assist him with the determination of the applicant's eligibility for TPS, and allow time for the applicant to submit evidence.

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 director's decision is withdrawn and the case is remanded to the director for further action consistent with the above and entry of a new decision.