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: CALIFORNIA SERVICE CENTER Date: OCT 27 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.

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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.

On appeal, the applicant claims that he never received the Notice of Intent to Deny dated June 23, 2003, and submits additional evidence in an attempt to establish continuous residence and physical presence in the Untied States.

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 indicates that the applicant filed his Form I-821, Application for Temporary Protected Status, on September 3, 2002. On February 12, 2003, the applicant was requested to provide evidence of identity. In response, the applicant provided evidence of identity and additional evidence in an attempt to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On June 23, 2003, the director issued a second Notice of Intent to Deny requesting that the applicant provide a certified copy of the final court disposition of his arrest by police officers in Los Angeles, California, on September 16, 1999, on the charge of X1 148(A)(PC), OBSTRUCT PUBLIC OFFICER WAR/0000, a misdemeanor. The notice was mailed to the applicant at his address of record, but he failed to respond to the notice. The director denied the application on January 23, 2004, because the applicant had abandoned his application by failing to respond to a request for additional evidence. The director erroneously advised the applicant that he could file an appeal from this decision within 30 days. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. The director's error does not, and cannot, supersede the regulations. Therefore, the appeal must be rejected.

However, in the director's discretion, he may reopen the decision on a Service motion pursuant to 8 C.F.R. § 103.5(a)(5), or excuse the late filing of a new motion under the requirements of 8 C.F.R. § 103.5(a)(1)(i).

It is noted that the applicant lists his address on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), as [redacted] Los Angeles, CA 90005." The applicant had previously listed his residence as [redacted] Los Angeles, CA 90005." However, there is no indication in the record that the applicant reported his apartment change to Citizenship and Immigration Services prior to the filing date of the appeal. Therefore, the applicant's explanation for his failure to respond to the second Notice of Intent to Deny cannot be accepted.

ORDER: The appeal is rejected.