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U.S. Citizenship
and Immigration
Services

MI

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: JAN 21 2005

IN RE:

Applicant:

[Redacted]
aka [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

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further 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 submit a complete response to the director's request to submit final court dispositions of all his 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 application on March 5, 2001. On March 10, 2003, the applicant was requested to submit the final court dispositions of his arrests: (1) on February 16, 2001, for inflicting corporal injury on spouse/cohabitant; (2) on March 21, 2002, for inflicting corporal injury on spouse/cohabitant, and "ATT TO COMMIT CRIME, RAPE, VICT INCPBL OF CNST;" and (3) on May 28, 2002, for grand theft, money/labor/property over \$400. Because the applicant failed to submit all court dispositions requested, the director concluded that the applicant had abandoned his application and denied the application on August 19, 2003.

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 can not, supersede the regulations. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the applicant, on appeal, resubmits the final disposition of his arrest on March 21, 2002, listed as No. (2) above, indicating that the charges were dismissed on October 10, 2002. He also submits a statement from the San Bernardino County Sheriff's Department regarding the applicant's arrest for grand theft, listed as No. (3) above; however, he failed to include the final court disposition. Additionally, no final court disposition was furnished for his arrest on February 16, 2001, listed as No. (1) above.

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.