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U.S. Citizenship  
and Immigration  
Services

MI

FILE:

[REDACTED]  
[WAC 01 212 55132]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 05 2005**

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*

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 respond to the director's request to submit the final court disposition of 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 of proceeding contains the Federal Bureau of Investigation fingerprint results report indicating that the applicant was arrested in Los Angeles, California: (1) on May 18, 1989, for shoplifting, a misdemeanor (name used: [REDACTED] and (2) on June 26, 1991, for petty theft with prior, a misdemeanor. On December 4, 2003, the applicant was requested to provide police clearances from every city where he had lived since arriving in the United States, and to provide a copy of the final court disposition of any arrests in the United States. Because the applicant failed to submit the requested documents, the director denied the application due to lack of prosecution on January 30, 2004.

The applicant responded to the director's decision on March 11, 2004, more than 40 days after the issuance of the director's denial decision. The applicant submits the requested court documents indicating that the applicant was convicted of petty theft with prior jail term (No. 2 above), and that the record regarding the case for the offense of shoplifting (No. 1 above) was destroyed. The destruction of court records, however, is not evidence that conviction(s) had been dismissed.

The director erroneously advised the applicant that he could file an appeal from the denial decision within 30 days. 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.