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U.S. Citizenship
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Services

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JAN 25 2005

[REDACTED]

FILE: [REDACTED]
[WAC 01 147 51787]

Office: CALIFORNIA SERVICE CENTER Date:

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 matter 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 application on March 16, 2001. On August 3, 2003, the applicant was requested to submit additional evidence of nationality and a certified copy of the final court disposition of his arrest on December 20, 1997, on the misdemeanor charge "Theft of personal property." The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on December 31, 2003. The director erroneously advised the applicant that he could file an appeal with the AAO within 30 days.

The applicant filed an appeal from the director's decision on February 2, 2004. On appeal, the applicant states that he never received the Notice of Intent to Deny dated August 3, 2003. He submits a clearance letter from the Superior Court of California, County of Los Angeles, State of California, and his Salvadoran military ID card and driver's license.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen 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 matter will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the applicant was apprehended by the United States Border Patrol near Seeley, California on June 2, 1996. The applicant was subsequently ordered deported in absentia by an Immigration Judge in Los Angeles, California, on June 25, 1997. The applicant was ordered to report to the Los Angeles office for deportation to El Salvador on February 3, 1998. He failed to appear as ordered. The record contains a Form I-205, Warrant of Removal/Deportation, issued by the District Director, Los Angeles, on January 20, 1998. The warrant is still outstanding.

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 matter is remanded for further action consistent with the above and entry of a new decision.