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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 07 2005
[WAC 03 030 51693]

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

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 September 10, 2002. On January 21, 2003, the applicant was requested to submit evidence of identity and nationality. On February 21, 2003, the applicant provided evidence of his identity and nationality.

On June 27, 2003, a Form I-797C notice was issued instructing the applicant to appear at the Citizenship and Immigration Services (CIS) office in El Monte, California, to be fingerprinted. The applicant did not appear for his fingerprint appointment or request that his fingerprint appointment be rescheduled. Therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on February 9, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the Notice of Decision on March 15, 2004. The applicant stated that he never received the CIS fingerprint appointment notice. He stated that, if he had received such notice, he would have appeared for his fingerprint appointment. He submitted additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time frames. It is noted that the applicant's response to the Notice of Decision was received more than 33 days after the date of issuance of the director's decision. It is further noted that the Notice of Intent to Deny, the Form I-797C fingerprint notice, and the Notice of Decision were all mailed to the applicant at his address of record, [REDACTED] the same address he listed on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU).

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.

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.