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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 02 2005  
[WAC 01 215 50219]

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.

A handwritten signature in cursive script, appearing to read "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 to the director for further action.

The applicant claims to be 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 his request to submit the final court dispositions 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 reveals that the applicant filed his application on May 14, 2001. In a notice of intent to deny dated March 31, 2004, the applicant was requested to submit the final court dispositions of any and all arrests in the United States, including his arrests listed in the Federal Bureau of Investigation (FBI) fingerprint results report. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on May 19, 2004.

The applicant responded to the director's decision on June 21, 2004. The applicant stated that he moved to Modesto, California, on February 8, 2004, and that he appeared in person at the USCIS office in San Jose to change his address; however, he never received any notice at his new address regarding his case. He provided court dispositions of his arrests.

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 case will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the record of proceeding contains no evidence of a change of address as claimed by the applicant. It is further noted that the applicant was convicted of the following offenses in California:

- (1) Convicted on April 22, 2003, Case No. [REDACTED] (arrest date April 4, 2002), of Count 1, driving without a valid driver's license, 12500(a) VC, a misdemeanor; Count 2, failure to stop at a stop sign, [REDACTED] an infraction; and Count 3, failure to appear, 40508(a) VC, a misdemeanor.
- (2) Convicted on May 19, 2002, Case No. [REDACTED] (arrest date May 18, 2002), of Count 2, driving with .08 percent blood alcohol level or more [REDACTED] VC, a misdemeanor; and Count 3, driving without a valid driver's license, 12500(a) VC, a misdemeanor (Count 1 was dismissed).
- (3) Convicted on July 29, 2003, Case No. [REDACTED] (arrest date May 18, 2002), of Count 1, no proof of car insurance, 16028(a) VC, an infraction; and Count 2, failure to appear, 40508(a) VC, a misdemeanor.
- (4) Convicted on August 23, 2002, Case No. [REDACTED] (arrest date July 9, 2002), of Count 1, under the influence of a controlled substance, 11550(a) H&S, a misdemeanor; and Count 2, resisting an officer, 148(a) PC, a misdemeanor.

(5) Convicted on February 26, 2003, Case No. [REDACTED] (arrest November 18, 2002) of attempted theft or unauthorized use of a vehicle, 664 PC/10851(a) VC, a misdemeanor.

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.