



U.S. Citizenship  
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FILE: [REDACTED]  
[SRC 01 261 55393]

Office: TEXAS SERVICE CENTER

Date: NOV 23 2005

IN RE: Applicant: [REDACTED]

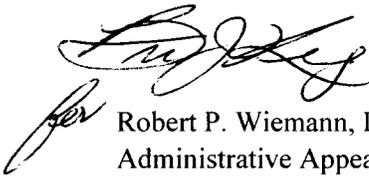
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.

  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas 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 stated 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 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 August 26, 2001. On July 2, 2002, the applicant was requested to submit final court dispositions for his three arrests including assault causing bodily injury of a family member on August 29, 2000 in Irvine, Texas, driving while intoxicated on September 10, 2000 in Arlington, Texas, and driving while intoxicated on March 21, 2001 in Spring, Texas. He was also required to explain why “your FBI rap sheet shows that you are a citizen of Mexico.”

After receiving no response, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on January 27, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen.

The applicant responded to the Notice of Decision on March 3, 2003. In his response, counsel argues that the applicant did not abandon his application for TPS or his application for employment authorization

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 does not have jurisdiction over this case. Therefore, the matter will be remanded and the director shall consider the applicant’s response as a motion to reopen.

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