

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

MI

FILE:

[REDACTED]
[SRC 03 020 50151]

Office: Texas Service Center

Date: **AUG 01 2006**

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.

Cindy N. Gomez
Robert P. Wiemann, Chief *of*
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 case 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 17, 2001. On January 13, 2003, the applicant was requested to submit a photo identification document. The applicant submitted the photo identification document on February 6, 2003. On March 14, 2003, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and physical presence in the United States. 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 13, 2003.

The director erroneously advised the applicant that he could file an appeal from this 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.

It is noted that the applicant's Federal Bureau of Investigation fingerprint results report reflects that the applicant was arrested in Houston, Texas, on March 4, 2005, and charged with Driving While Intoxicated. This arrest and/or conviction must be addressed by CIS in any future proceedings.

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.