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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 04 2006**  
[WAC 99 199 51038]

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 for further consideration and action.

The applicant claims to be a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed his initial TPS application during the initial registration period. The applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed the following offenses:

1. The applicant was arrested in Fairfield, California, on February 13, 1999, and charged with battery on spouse in violation of section 243(e)(1) PC, a misdemeanor.
2. The applicant was arrested in Fairfield, California, on March 12, 1999, and charged with battery on spouse or cohabitant in violation of section 243(e)(1) PC, a misdemeanor.

On July 20, 2000, the applicant was requested to submit the final court dispositions of the offenses detailed above. The record does not contain a response from the applicant. The director, therefore, denied the application on December 7, 2000, after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

On appeal, the applicant provided a statement and additional evidence. Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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 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. The director's error does not, and cannot, supersede the regulations. 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, in response to the denial decision, provided a letter dated December 20, 2000, from [REDACTED] Deputy Public Defender, Solano County Hall of Justice, stating that he was enclosing a photocopy of the citation relating to the applicant's arrest on February 13, 1999. [REDACTED] stated that the applicant was charged by citation on February 13, 1999, and his court appearance date was March 12, 1999. Counsel further stated that the applicant completed a 52-week counseling course and "did not commit any new violations of law." The applicant also provided a Criminal Minute Order from the Solano County Court indicating that the applicant's charge was dismissed on September 12, 2000. The applicant did not submit a

photocopy of the citation relating to his arrest on February 12, 1999, as stated [REDACTED] in his letter. Further, even if the applicant had submitted a copy of his citation, neither the citation nor the court minute order reflects the final court disposition of the applicant's arrest. The applicant, to date, has not provided the final court disposition of his arrest.

It is further noted that the record contains an outstanding warrant of removal issued by the District Director, Los Angeles, California, on June 29, 1995.

Finally, it is noted that the applicant has not submitted an official Honduran identification document bearing his photograph and/or fingerprint to establish his identity and nationality as described at 8 C.F.R. §244.9(a)(1).

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.