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U.S. Citizenship  
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FILE: [REDACTED] Office: California Service Center Date: MAY 29 2007  
[WAC 05 228 78649, as it relates to EAC 01 231 56641]

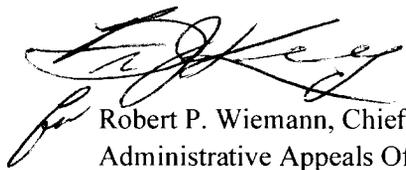
IN RE: Applicant: [REDACTED]

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 California Service Center. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The initial application was denied by the Director, Vermont Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and 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 record reflects that the applicant's initial TPS application was filed on July 19, 2001, under CIS receipt file number EAC 01 231 56641. On March 27, 2003, the Vermont Service Center director denied that application, due to abandonment. The director noted that the applicant failed to respond to a notice of intent to deny to submit evidence to establish his continuous residence in the United States from February 13, 2001, and his continuous physical presence from March 9, 2001. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen within the requisite period.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 16, 2005, under CIS receipt number WAC 05 228 78649, and indicated that he was filing a re-registration application. The director denied that application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for TPS.

The AAO notes that the record contains a notice of intent to deny, dated March 3, 2003, which was mailed to the former address; and, the address on the denial notice was not the applicant's address of record as of the date of mailing (as evidenced by an Application for Employment Authorization, stamped filed September 12, 2002, and stamped "Approved" on February 4, 2003). As the record of proceeding indicates that the director's notice of intent to deny was returned as undeliverable, there is an inference that the applicant also did not receive the as the director's denial notice, dated March 27, 2003. Without evidence that the applicant received these notices, there is no basis to determine whether the applicant failed to comply with the director's instructions in the notice of intent to deny, and the appeal instructions.

The director's denial of the initial application will be withdrawn; the application will be remanded for a new decision. The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Salvadorans.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.