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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

M1



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: DEC 15 2004

IN RE:

Applicant:



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.

*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 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 appear to be fingerprinted.

If an individual required to appear for fingerprinting does not appear or Citizenship and Immigration Services does not receive his or her request for rescheduling by the date of the fingerprinting appointment, 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 April 2, 2001. On November 29, 2002, the applicant was requested to appear for fingerprinting. The record does not contain a response from the applicant. A CIS' systems check indicates that the applicant did not appear to be fingerprinted. The director concluded that the applicant had abandoned his application and issued a Notice of Denial Due to Abandonment on July 29, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the Notice of Denial Due to Abandonment on August 28, 2003. The applicant requested that his TPS application be reopened and stated that he never received a fingerprint appointment and that it must have been sent to his previous address. The applicant also provided additional documentation in support of his claim.

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.

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.