

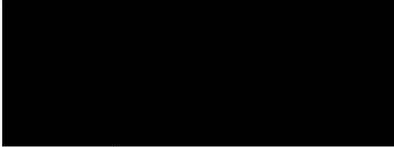
invasion of personal privacy

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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: [Redacted]

Office: TEXAS SERVICE CENTER Date: [Redacted]

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.

Robert P. Wiemann
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 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 for his scheduled fingerprinting appointment.

The regulations at 8 C.F.R. § 103.2(e)(1), (2), and (4) describe the requirements for fingerprinting that the applicant must meet in order to comply with the requirements for this type of benefit application.

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). This regulation further provides that an application shall be considered abandoned and shall be denied if: an individual requested to appear for fingerprinting does not appear; CIS does not receive his or her request for rescheduling by the date of the fingerprinting appointment; or, the applicant has not withdrawn the application.

The regulation at 8 C.F.R. § 244.9(4)(c) states, in pertinent part:

Failure to timely respond. Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

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 initial TPS application on May 2, 2001, and filed subsequent applications marked as re-registration applications on September 12, 2002 and August 28, 2003. The applicant was not issued a notice of intent to deny or a request to submit additional evidence. On June 24, 2003, the director issued a Notice of Decision to Deny, informing the applicant that his TPS application had been deemed abandoned and was denied due to the applicant's failure to appear for scheduled fingerprinting. The director advised the applicant that, while a denial due to abandonment could not be appealed, the applicant could file a motion to reopen pursuant to the regulations at 8 C.F.R. § 103.5.

In a timely response to the Notice of Decision to Deny, the applicant asks that his motion to reopen be granted and that he be granted TPS and an employment authorization card (EAD). The applicant asks in the alternative that he be given another opportunity to receive a fingerprint appointment, and that he stands ready to appear for fingerprinting at any time designated. The applicant states that he did not respond to the initial fingerprint appointment because he did not understand the notification. He states that he misunderstood the notice because he does not understand English. The applicant does not provide 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.

It also is noted that the record includes an unadjudicated Form I-601, Application for Waiver of Ground of Excludability, filed by the applicant with his initial TPS application. On the waiver application, the applicant states that on January 19, 1998, he was apprehended by Immigration and Naturalization Service officers, was interviewed, fingerprinted and released at the Mexican border. The applicant states that he provided a fictitious name during that encounter, and apologizes for his action. The record includes a memorandum dated January 23, 2003, from the Texas Service Center to the Houston District Office, advising that office of the Form I-601, and requesting that the District Office take any action deemed necessary in relation to the waiver application. The record, however, does not include a decision on the waiver application. The Form I-601 must also be adjudicated prior to issuance of a final decision on the TPS application.

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.