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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

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FILE:



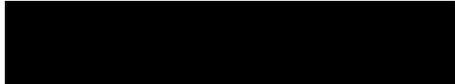
[WAC 02 158 52612]

Office: CALIFORNIA SERVICE CENTER

Date: MAR 07 2005

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, 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 matter 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 April 11, 2002. On April 12, 2002, the applicant was requested to appear at the Citizenship and Immigration Services (CIS) office in El Monte, California, to be fingerprinted. The applicant did not appear to be fingerprinted as requested, nor did he request that his fingerprint appointment be rescheduled.

On October 7, 2003, the applicant was sent a second notice instructing him to appear at the CIS office in El Monte, California, to be fingerprinted. The applicant did not appear for his fingerprint appointment, nor did he request another fingerprint appointment. Both notices were sent to the applicant's address of record, the same address he listed on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU). The director concluded that the applicant had abandoned his application and issued a Notice of Denial on March 4, 2004. 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 Decision on April 8, 2004. The applicant submitted additional evidence in an attempt to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. It is noted that the applicant's response to the Notice of Decision was received on April 8, 2004, more than 33 days after the issuance of the director's decision.

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 matter will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the record as it is presently constituted does not contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time frames.

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 matter is remanded for further action consistent with the above and entry of a new decision.