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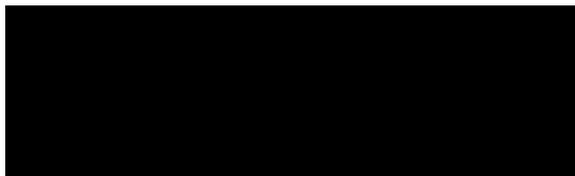
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 02 184 51131]

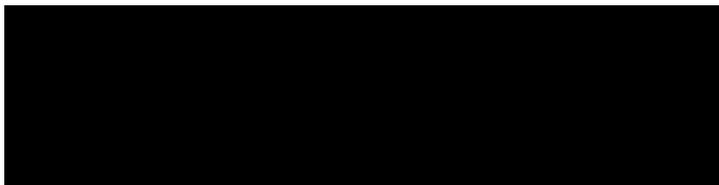
OFFICE: CALIFORNIA SERVICE CENTER

DATE: NOV 26 2005

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:



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.


for 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 to the director for further 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 a scheduled appointment for fingerprinting.

If an individual requested to appear for fingerprinting or for an interview does not appear, Citizenship and Immigration Service (CIS) does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 May 10, 2002. On January 12, 2004, the applicant was requested to appear for fingerprinting at the CIS office in El Monte, California, on February 18, 2004. The record does not contain evidence that the applicant appeared as required. Therefore, the director concluded that the applicant had abandoned his application and denied the application on June 14, 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, through counsel, responded to the director's Notice of Denial Due to Abandonment by filing a motion to reopen the case on April 26, 2004. He asserts that he did not receive the appointment letter.

The director accepted the motion as an appeal and forwarded the file to the AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

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 motion.

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.