



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 30 2005
[WAC 02 062 54721]

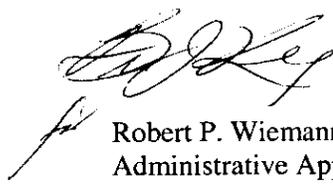
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[REDACTED]

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 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 Services (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for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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).

A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. § 103.5(a).

The record shows that the applicant filed his TPS application on December 6, 2001. On December 18, 2001, the applicant was requested to appear for fingerprinting at the CIS office in El Monte, California, on January 22, 2002. 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 January 14, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen.

The applicant responded to the director's notice of denial by filing a motion to reopen the case on January 30, 2004. He asserts that he never received the appointment letter.

On April 2, 2004, the director dismissed the motion because it did not meet the applicable requirements of a motion as set forth in 8 C.F.R. § 103.5(a).

On May 3, 2004, the applicant, through counsel, appeals the director's decision to dismiss the motion. Counsel asserts that the applicant's statement that he never received notice of the appointment was unequivocally credible, as he had complied with every TPS requirement to date. He further asserts that there is absolutely no reason to find that the applicant would have failed to attend the fingerprinting appointment after registering for TPS twice and responding to every other request made by CIS in conjunction with his TPS application.

The director accepted the applicant's appeal and forwarded the file to the AAO. However, as the initial decision by the director was based on abandonment, the AAO has no jurisdiction over an appeal filed based on a decision made as a result of a motion. Therefore, the case will be remanded to the director.

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.