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**U.S. Citizenship
and Immigration
Services**

MI



FILE:



Office: VERMONT SERVICE CENTER

Date: **OCT 05 2005**

[EAC 01 263 50655]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

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 applicant filed his TPS application on August 24, 2001. On May 10, 2002, the director denied the application after determining that the applicant had abandoned his application because the applicant failed to appear for fingerprinting.

8 C.F.R. 103.2(b)(13) states, in pertinent part, that:

If an individual requested to appear for fingerprinting or for an interview does not appear, the Service 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for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly shall be denied.

On October 25, 2001, the applicant was requested to appear at a specified Application Support Center (ASC) to be fingerprinted in accordance with 8 C.F.R. 103.2(a) and (b)(9). Service records showed that the applicant failed to appear. The director concluded that the applicant had abandoned his application. Consequently, the director denied the application on May 10, 2002, and advised the applicant that there is no appeal from this decision. The director informed the applicant that the applicant may file a motion to reopen a petition or application denied due to abandonment with evidence that the decision was in error because:

1. The requested evidence was not material to the issue of eligibility.
2. The required initial evidence was submitted with the application or petition, or the request for initial evidence of additional information or appearance was complied with during the allotted period; or
3. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The applicant was given until June 13, 2002 to file a motion to reopen.

The applicant filed a motion to reopen on May 23, 2002.

The record indicates that subsequent to the applicant's motion to reopen, the director, in a notice of intent to deny, dated March 20, 2003, requested that the applicant submit evidence to show that he has been continuously residing in the United States since February 13, 2001, and that he has been continuously physically present in the United States since March 9, 2001. The director found that the applicant, in response to the notice of intent to

deny, failed to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframe. The director denied the TPS application on May 23, 2003.

The director erred in issuing the notice of intent to deny and the denial notice, as the director failed to issue a decision on the applicant's motion to reopen. The file was forwarded to the AAO. However, as the director's initial 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 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 new decision.