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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 01 2006
[WAC 05 110 73917]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 record reveals that the applicant filed a TPS application during the initial registration period on April 3, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 173 50974. The director denied that application based on abandonment on February 2, 2004, because the applicant had failed to respond to a request dated December 10, 2003, to submit the fee for fingerprinting. On March 22, 2004, the applicant filed an appeal from the denial decision. The director rejected the applicant's appeal on June 17, 2004, because the appeal was untimely filed, and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 18, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

A review of the record, however, indicates that the director's notice of decision to deny dated February 2, 2004, was mailed to an incorrect address, [REDACTED]. Therefore, the director's notice to reject the applicant's appeal based on untimely filing, will be withdrawn. 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 reconsider the applicant's appeal or motion to reopen.

As noted above, the director's notice of decision was mailed to an incorrect address; therefore, the applicant's appeal is not considered as untimely filed. The applicant's appeal or motion must be addressed by the director before a decision is made on the applicant's re-registration application. Therefore, the director's decision to deny the re-registration application will also be withdrawn.

It is noted that although the applicant stated on his appeal, filed on March 22, 2004, that he did not receive the request to submit the fee for fingerprinting because the request was probably mailed to the wrong address, it is noted that the director's request dated December 10, 2003, was mailed to the applicant's correct address [REDACTED].

In fact, the record shows that the applicant responded to the director's December 10, 2003, request for fingerprinting fee. That response was received at the Service Center on February 11, 2004, after the director's denial decision of February 2, 2004, was mailed. It is also noted that the applicant's response did not include any correspondence or note from the applicant, nor was there evidence that the applicant did in fact forward the fingerprint fee as requested.

The case will be remanded to the director. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 for appropriate action consistent with the above discussion and entry of a new decision.