

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

ML

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 02 2006

[WAC 01 190 51314]

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, Chief
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for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 April 18, 2001. On November 15, 2003, the applicant was requested to appear for fingerprinting at the CIS office in Salinas, California, on December 21, 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 July 13, 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.

Counsel responded to the director's Notice of Denial Due to Abandonment by filing a motion to reopen the case on August 12, 2004. He asserts that the applicant did appear on the appointed date; however, the applicant was instructed to return for fingerprinting after a cut on his finger healed. Counsel states that the applicant returned to the CIS office and was subsequently fingerprinted on July 13, 2004. He submits a notated copy of the Fingerprint Notification to support his claim.

The record of proceeding indicates that the applicant did appear for his scheduled fingerprinting on February 19, 2004, he was subsequently fingerprinted on July 13, 2004, and the Federal Bureau of Investigation fingerprint results report dated July 13, 2004, does not reflect a criminal record that would bar the applicant from receiving TPS. Therefore, the director's finding that the applicant abandoned his application will be withdrawn, and the case will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to El Salvadorans.

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.