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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
[LIN 01 169 52698]

Office: California Service Center

Date: OCT 03 2006

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, Director
Administrative Appeals Office

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

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for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 16, 2001. The applicant was requested to appear for his fingerprint appointment on August 29, 2001. The director concluded that the applicant had failed to appear for his fingerprinting and issued a Notice of Denial on December 18, 2001, due to the abandonment of his application. The applicant filed a motion to reopen on May 10, 2002. The director denied this motion on July 15, 2002.

On January 26, 2004, the applicant filed a subsequent motion to reopen from the director's decision. The director denied this motion on February 28, 2004, and stated that the evidence submitted by the applicant failed to address the issue of fingerprints. The director also noted that due to the length of time regarding the completion of his fingerprints, the applicant's case could not be reopened.

On March 22, 2004, the applicant submitted the appeal that is now before the AAO. On appeal, the applicant stated that he never received a notification, and thus, he was unaware of his fingerprint appointment.

There is no appeal from a denial due to abandonment. 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)(6).

The director erroneously accepted the applicant's response to the director's latest decision as an appeal and forwarded the file to the AAO. However, in this case, the director denied the original application due to abandonment; since the original decision was not appealable to the AAO, the AAO has no jurisdiction to consider the current appeal from the director's denial of the subsequent Motion to Reopen. Therefore, the case will be remanded and the director shall consider the applicant's response as a Motion to Reopen.

It is noted that on February 22, 2005, the applicant sent additional documentation to the AAO. This documentation contains an affidavit dated February 7, 2005, from the applicant stating that he had missed his fingerprint appointment. However, the applicant previously stated on appeal that he had never received this

appointment letter. In addition, the applicant submitted a copy of the July 31, 2001, appointment notification requesting him to appear for fingerprinting on August 29, 2001.

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.