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FILE:



OFFICE: California Service Center

Date: **OCT 31 2006**

[WAC 05 152 72098]

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.

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 for further consideration and action.

The applicant claims to be a native and citizen of El Salvador who is seeking re-registration for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the re-registration application after determining that the applicant failed to appear for his fingerprinting appointment and, therefore, had abandoned his application.

If all requested initial evidence and requested additional evidence is not submitted by the required date, 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 initial TPS application on April 24, 2001 and was granted TPS status on May 22, 2003. The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 1, 2005 and indicated that he was re-registering for TPS.

The applicant was notified to appear on April 28, 2005 at a USCIS Application Support Center (ASC) to have his fingerprints taken. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on September 6, 2005. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the director's decision on September 15, 2005. The applicant requested that his TPS application be reopened and stated that he appeared at the ASC office in Charlotte, NC on April 28, 2005. The record of proceeding also includes an interoffice memorandum from Donald A. Thompson, Acting ASC Manager of the Charlotte ASC office stating that the applicant appeared on April 28, 2005 and was manually fingerprinted. The fingerprint card was attached to the memorandum.

The memorandum also noted that the applicant presented a fraudulent driver license for identification and was confiscated. The memorandum finally noted that the applicant may be deportable.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, as the director's 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 response as a motion to reopen his re-registration application. The director also must render a decision on the notice of intent to withdraw TPS issued in the same letter.

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.