U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 06 2006

[WAC 05 153 77315]

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.

for 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.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under 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 5, 2001 under CIS receipt number SRC 01 168 56232. The Director, Texas Service Center approved that application on April 25, 2002.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 2 2005, and indicated that he was re-registering for TPS.

The Director, California Service Center denied the application after determining that the applicant had abandoned his application by failing to appear for fingerprinting. The director also simultaneously issued a notice of intent to withdraw TPS because the applicant's failure to appear for fingerprinting rendered his re-registration application complete and abandoned.

If all requested 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 application on April 5, 2001. The director stated that the applicant was requested to appear for fingerprinting on May 4, 2005. According to the director, the applicant failed to appear; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial 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.

In compliance with the director's instructions, the applicant submitted a motion to reopen his case. According to the applicant, he never received an appointment letter for fingerprints.

The director accepted the motion as an appeal and forwarded the file to AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction on this case, and it may not be appealed to the AAO. Therefore, the case will be remanded and the director shall consider the motion.

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.