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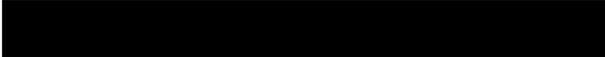
**U.S. Citizenship
and Immigration
Services**

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FILE: [WAC 01 171 56744] Office: CALIFORNIA SERVICE CENTER Date: **JAN 19 2007**

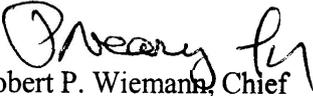
IN RE: Applicant: 

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, reopened, and denied again by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for consideration as a motion to reopen.

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 his Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on March 27, 2001.

The director initially denied the application on February 3, 2004, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On February 26, 2004, the applicant filed an appeal from the denial decision. On appeal, the applicant submitted substantial evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The director reopened the matter on March 3, 2004. On March 9, 2004, the applicant was sent a notice instructing him to appear at the Application Support Center in Gardena, California, to be fingerprinted on April 2, 2004. The notice was mailed to the applicant's address of record, but was returned to the California Service Center as undeliverable mail.

On May 20, 2004, the director denied the application again after determining that the applicant had abandoned his application by failing to appear for his fingerprint appointment or request that his fingerprint appointment be rescheduled. The director advised the applicant that, while the decision could not be appealed, he could file a motion to reopen within 30 days.

If an individual requested to appear for fingerprinting or for an interview does not appear, Citizenship and Immigration Services (CIS) does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or if 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 applicant filed a motion to reopen the matter on June 10, 2004; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. 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.

It is noted that the applicant was subsequently fingerprinted in conjunction with his re-registration application filed with the California Service Center on May 9, 2005, under CIS receipt number WAC 05 221 87787, and no criminal record was found.

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.