

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M1

FILE:



OFFICE: VERMONT SERVICE CENTER

Date: JAN 29 2007

[EAC 02 259 51435]

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, Vermont 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 Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that border patrol agents apprehended the applicant on July 27, 2001, in Brownsville, Texas, while he was aboard a 1000 Expresso Bus headed to Houston, Texas. The applicant stated that he was from El Salvador and had entered the United States illegally.

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 TPS application on August 7, 2002. On June 8, 2003, the applicant was requested to appear for fingerprinting as scheduled. The director denied the TPS application on March 17, 2004, due to abandonment, because the applicant had failed to report for fingerprinting as scheduled. 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 April 8, 2004. The applicant requested that his TPS application be reopened and stated that he did not receive the fingerprinting notice.

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.

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.