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U.S. Citizenship
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FILE: [REDACTED]
[SRC 01 140 54270]

Office: Texas Service Center Date:

JUN 14 2007

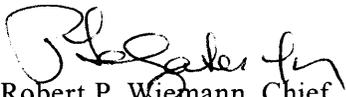
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[REDACTED]

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, Texas Service Center (TSC), 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 director denied the application after determining that the applicant had abandoned his application by failing to respond to a request to appear for fingerprinting.

If an individual requested to appear for fingerprinting does not appear, 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 his Form I-821, Application for Temporary Protected Status, with the TSC on March 19, 2001, during the initial registration period. On May 8, 2001, and again on August 15, 2002, the applicant was requested to appear for fingerprinting. The director concluded that the applicant had failed to appear for fingerprinting and denied the application due to abandonment on August 5, 2003. Since the application was denied due to abandonment there was no appeal available. However, the was advised that he could file a motion to reopen.

The applicant, through counsel, responded to the director's decision on December 1, 2003. Counsel for the applicant states that his client did go for his fingerprinting appointment on May 8, 2001, and was unaware that the TSC had mailed a second notice to appear for fingerprinting, as the applicant had moved and never received the second notice. The only notice received by the applicant according to counsel was the notice of intent to deny which was received several months after the deadline to respond. Counsel also provided a copy of a DBI TENPRINTER Applicant Information Worksheet (AIW), annotated with an alien registration number of [REDACTED] dated May 8, 2001.

Service records indicate that the applicant's fingerprints were forwarded to the Federal Bureau of Investigation (FBI) on May 9, 2001. Therefore, the application was not abandoned and the director's reason for denial has been overcome.

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.

Beyond the decision of the director, it is noted that the applicant has failed to submit sufficient evidence to establish his nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). He also has failed to submit sufficient evidence to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c).

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The case is remanded to the director for further action consistent with the above.