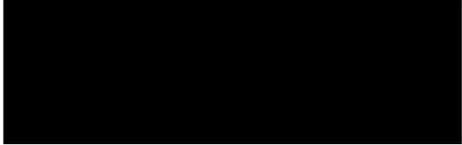




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy



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FILE: [REDACTED]
[WAC 05 229 70191]

OFFICE: CALIFORNIA SERVICE CENTER

Date: MAR 01 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: 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 initial application was denied by the Director, Vermont Service Center. A subsequent re-registration application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The case will be remanded for further consideration and action.

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 director denied the application after determining that the applicant had abandoned his application by failing to report for fingerprinting as scheduled.

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 16, 2001. The application was denied on August 12, 2004, due to abandonment, because the applicant failed to report for fingerprinting as scheduled.

The applicant filed a TPS re-registration application on May 19, 2005. The Director, California Service Center, denied that application on September 6, 2005, due to abandonment, because the applicant failed to report for fingerprinting as scheduled.

The applicant responded to the director's decision on October 5, 2005. The applicant requested that his TPS application be reopened and stated that he was working around the country and didn't receive the notice to appear for fingerprinting until he returned home.

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.