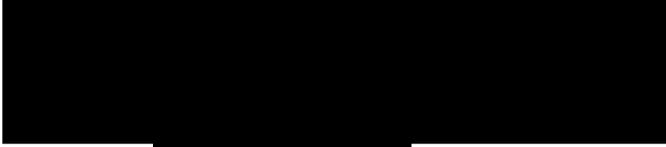


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Services**

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



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FILE: [REDACTED]
[EAC 01 212 53222]

OFFICE: VERMONT SERVICE CENTER

Date: MAR 22 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

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 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 appear for fingerprinting as instructed.

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 application on June 22, 2001. On May 6, 2003, the applicant was sent a Fingerprint Notification requesting that he appear for fingerprinting on May 22, 2003, at 10:00 AM. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on February 18, 2004. 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 March 18, 2004. The applicant requested that his TPS application be reopened and stated "I have never received any notice from you telling me to go to any support center to be fingerprinted other way [sic] I would do it".

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.

It is noted that a previous fingerprint notification had been correctly mailed to the applicant on March 11, 2002, to his previous address. The subsequent mailing was also correctly sent to the applicant's latest address of record. It is also noted that a Federal Bureau of Investigation (FBI) fingerprint results report was processed on July 11, 2005, and that the results of any arrest(s) contained in that report must be examined before another decision is rendered.

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.