



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: California Service Center

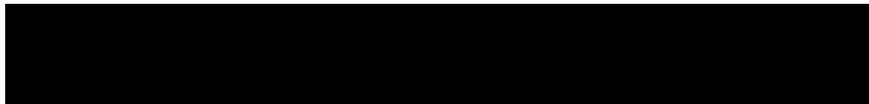
Date: **MAY 02 2007**

[WAC 06 243 50278, motion]

[WAC 05 221 86294]

IN RE:

Applicant:



APPLICATION:

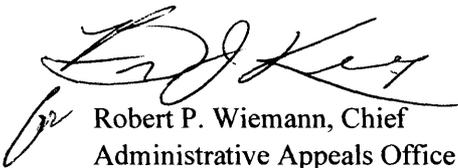
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

ON BEHALF OF APPLICANT:



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, California Service Center, and is now before the Administrative Appeals Office (AAO). 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 record reveals that the applicant filed an initial TPS application on April 23, 2001, under CIS receipt number SRC 01 194 50544. That application was approved by the Texas Service Center Director, on May 28, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 7, 2005, under CIS receipt number WAC 05 221 86294, and indicated that he was re-registering for TPS.

On June 29, 2005, the applicant was requested to report for fingerprinting on July 13, 2005. The California Service Center Director denied the re-registration application for abandonment, on May 8, 2006, because the applicant failed to report for fingerprinting as requested.

If an individual requested to appear for fingerprinting does not appear, the Service does not receive his or her request for rescheduling by the date of the fingerprinting appointment, or the applicant has not withdrawn the application, the application shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 responded to the director's Notice of Decision on August 7, 2006. The applicant requested that his TPS application be reopened and stated that he never received a request for fingerprinting. The applicant also alleges ineffective assistance of a former representative, who advised him, to his detriment, that he did not need to be concerned with the director's denial decision. It is noted that the applicant's response to the Notice of Decision was received more than 90 days after the issuance of the director's decision.

The director accepted the applicant's response as an appeal 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 also noted that the record reveals that the applicant was apprehended on entry on May 5, 1999, placed in Removal Proceedings, and ordered removed to El Salvador on March 13, 2000, by the Immigration Judge.

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.