



U.S. Citizenship
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Services

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FILE:

[REDACTED]

Office: California Service Center

Date:

[WAC 05 159 71332
as it relates to SRC 01 201 55511]

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 California Service Center. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn; and the applicant's re-registration application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO). The case will be remanded for further consideration and action.

The applicant is a 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 May 7, 2001, under CIS receipt number SRC 01 201 55511. The Texas Service Center Director approved that application on February 17, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 8, 2005, under CIS receipt number WAC 05 159 71332, and indicated that he was re-registering for TPS. The California Service Center Director simultaneously withdrew the applicant's TPS and denied the re-registration application, on September 6, 2005, due to abandonment because the applicant failed to report for scheduled fingerprinting. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. 8 C.F.R. § 103.2(b)(15). The applicant filed this motion to reopen.

The applicant's counsel responded to the director's Notice of Decision on February 26, 2005 by submitting a Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO). Counsel states that although the director states in his denial decision that the applicant did not appear for biometrics as requested, the applicant did not receive a biometrics appointment notice; instead, the applicant received a notice, dated March 10, 2005, informing him that CIS will schedule a biometrics appointment. The record of proceedings contains a Fingerprint Notification form, dated June 18, 2005; however, while the notice was sent to the applicant's mailing address, it was addressed to another individual and was returned to CIS by the U.S. Postal Service marked "attempted - not known."

The director accepted the applicant's response to the denial notice 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.

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.