

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

Identifying data is used to
prevent clearly unmerited
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

[Redacted]

MU

JAN 25 2005

FILE: [Redacted]

Office: California Service Center Date:

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 respond to the required fingerprint scheduling.

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 May 22, 2002. On May 24, 2002, the applicant was requested to appear for fingerprinting. The record reveals that the notice was returned by the Post Office and annotated as "not deliverable as addressed, unable to forward." The director concluded that the applicant had abandoned his application and denied the application on October 15, 2002. 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 filed a Motion to Reopen on November 15, 2002. The director dismissed the motion because the applicant "failed to provide evidence to support the fact of the change of address." The director noted that the "Service Center database shows a change of address was made after the Notice of Decision was sent out."

The applicant responded to the director's decision on November 13, 2002. The applicant states that one month after he submitted his application forms to the Laguna Nigel, California office he moved to [REDACTED]. The applicant also states that he doesn't understand why CIS sent the fingerprint notification to the prior address.

It is noted that an envelope from the applicant bearing his new address is included in the record; this envelope bears a postmark of May 15, 2002, and was received by the Service on May 23, 2002. Therefore, this evidence indicates that the applicant did notify the Service of his new address prior to issuance of the scheduling appointment, the notice of intent to abandon, and the denial decision. In fact, it appears that the address change was submitted at the time that the initial Form I-821 was accepted by the Service after having been returned to the applicant.

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, and issue a new decision.

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 new decision.