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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 11 2005
[SRC 01 180 64397]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 his scheduled fingerprinting appointment.

The regulations at 8 C.F.R. § 103.2(e)(1), (2), and (4) describe the requirements for fingerprinting that the applicant must meet in order to comply with the requirements for this type of application.

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). This regulation further provides that an application shall be considered abandoned and shall be denied if: an individual requested to appear for fingerprinting does not appear; Citizenship and Immigration Services (CIS) 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receive his or her request for rescheduling by the date of the fingerprinting appointment; or, the applicant has not withdrawn the application.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 regulation at 8 C.F.R. § 244.9(4)(c) states, in pertinent part:

Failure to timely respond. Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

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, and filed subsequent applications marked as re-registration applications on October 21, 2002, and September 10, 2003. On December 18, 2003, the director issued a Notice of Decision to Deny, informing the applicant that his TPS application had been deemed abandoned and was denied due to the applicant's failure to appear for scheduled fingerprinting. The director advised the applicant that, while a denial due to abandonment could not be appealed, the applicant could file a motion to reopen within 30 days pursuant to the regulations at 8 C.F.R. § 103.5.

In response to the director's decision, the applicant states that he has re-registered on time and asserts that he did appear to have his fingerprints taken "on 11-29-2002." He states that upon receiving the denial letter, he returned to the location where his fingerprints were taken and was told that his results had been sent "to the general office." In support of the response, the applicant submits a copy of the Fingerprint Notice dated "05/31/01," advising the applicant that he must report to the Application Support Center (ASC) on "11/29/2002."

CIS records indicate that the applicant was first scheduled for fingerprinting on May 31, 2001, and that the beginning date of the applicant's fingerprint window was December 4, 2001. The record includes a response from the Federal Bureau of Investigation (FBI), processed on December 10, 2001, indicating that the applicant did not have a criminal or other record as of that date.

The director's decision refers to the applicant's failure to appear for fingerprinting on "7/01/03." The record of proceedings does not include a contemporaneous copy of the later Fingerprint Notification that would have been mailed to the applicant. The record includes later printouts of the Fingerprint Notification on August 28, 2003, and December 18, 2003.

Because the applicant had previously appeared for fingerprinting, the application should not have been denied for abandonment for failure to appear for required fingerprinting. Therefore, the applicant has overcome the service center director's sole reason for denial.

However, the applicant has not submitted sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. It is noted that the applicant submitted pay stubs dated January 23, 2001, and March 20, 2001, from Village Foundation Repair, Inc., Sugar Land, Texas. These documents, however, are in the name [REDACTED] and list a different address and different social security number than those items provided by the applicant on his applications. There is no evidence that these documents are linked to the applicant.

The case will be remanded. The director may request any evidence deemed necessary to assist her with the determination of the applicant's eligibility for TPS, and allow time for the applicant to submit evidence. The issuance of any additional Fingerprint Notification, in order for the applicant to comply with fingerprinting requirements, should also be reflected in the record.

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.