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FILE: [REDACTED]
[EAC 03 006 51436]

Office: VERMONT SERVICE CENTER

Date: JUL 29 2005

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter 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 because he failed to appear to be fingerprinted or to request that his fingerprint appointment be rescheduled.

If an individual requested to appear for fingerprinting or for an interview 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for rescheduling by the date of the fingerprinting appointment or interview, or if the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 September 10, 2002. On May 28, 2003, a fingerprint appointment notice was mailed to the applicant at his address of record. The applicant was instructed in the notice to appear at the CIS office in Baltimore, Maryland, on June 26, 2003, to be fingerprinted. The applicant failed to appear for his fingerprint appointment, or to request that his fingerprint appointment be rescheduled. Therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on March 30, 2004. The director advised the applicant that, while the decision could not be appealed, he could file a motion to reopen within 30 days.

The applicant responded to the Notice of Decision on April 26, 2004. The applicant states that he “wasn’t able to read the letter” and missed his fingerprint appointment.

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 matter will be remanded and the director shall consider the applicant’s response as a motion to reopen.

It is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant’s continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. It is further noted that the applicant filed his TPS application on September 10, 2002, after the expiration of the initial registration period. The applicant has not submitted any evidence to establish his eligibility for late initial registration.

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 matter is remanded for further action consistent with the above and entry of a new decision.