U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 0 9 2005

[EAC 01 231 60301]

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.

Cindy M. Gomez for

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 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 because the applicant failed to appear for fingerprinting.

8 C.F.R. 103.2(b)(13) states, in pertinent part, that:

> If an individual requested to appear for fingerprinting or for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandon and, accordingly shall be denied.

The record reveals that the applicant filed his initial TPS application on July 18, 2001. On October 2, 2001, and again on May 24, 2002, the applicant was requested to appear at a specified Application Support Center (ASC) to be fingerprinted in accordance with 8 C.F.R. 103.2(a) and (b)(9). The applicant failed to appear. The director concluded that the applicant had abandoned his application. Consequently, the director denied the application on June 27, 2003, and advised the applicant that there is no appeal from this decision.

The applicant was given until July 30, 2003 to file a motion to reopen.

The applicant filed a motion to reopen on July 30, 2003. In support of his motion, the applicant stated that he mailed a letter to "INS" on March 26, 2002, "notifying them of my new address at that time [redacted] The applicant provided a copy of the letter. It is noted that the second request was mailed to the Pratt Street address.

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.

It is noted that the record fails to contain sufficient evidence of the applicant's identity, nationality, continuous residence in the United States since February 13, 2001, and, continuous physical presence in the United States since March 9, 2001.

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.