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FILE: [REDACTED]
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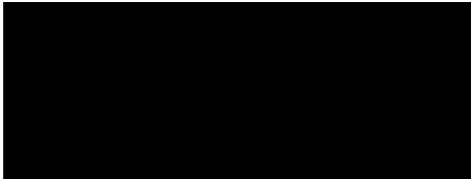
Office: CALIFORNIA SERVICE CENTER

Date: OCT 17 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:



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.


for 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 motion. The case will be remanded to the director for further action.

The applicant claims to be 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 a scheduled appointment for fingerprinting.

If an individual requested to appear for fingerprinting or for an interview does not appear, Citizenship and Immigration Service (CIS) 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for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 shows that the applicant filed his application on May 23, 2001. On October 7, 2003, the applicant was requested to appear for fingerprinting at the CIS office in San Francisco, California, on October 31, 2003. The record does not contain evidence that the applicant appeared as required. Therefore, the director concluded that the applicant had abandoned his application and denied the application on June 15, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

Counsel responded to the director's Notice of Denial Due to Abandonment by filing a motion to reopen the case on July 2, 2004. He asserts that on October 1, 2002, the applicant advised CIS in writing of a change of address, and that the applicant did not receive the appointment letter because it was sent to his old address.

It is noted, however, that the October 7, 2003, notification to appear for fingerprinting was mailed to the applicant at his most recent address provided to CIS [REDACTED], and that there is no evidence in the record that the director's notice was returned to the Service as undelivered. It is further noted that this address is the same as that listed on the Form G-28, Notice of Entry of Appearance as Attorney or Representative, dated June 23, 2004, furnished by counsel on motion.

The director accepted the motion as an appeal and forwarded the file to the AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

As the director's decision was based on abandonment, the AAO has no jurisdiction on this case. Therefore, the case will be remanded and the director shall consider the motion.

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.