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U.S. Citizenship
and Immigration
Services

MI

FILE:

Office: TEXAS SERVICE CENTER

Date: SEP 30 2005

[SRC 01 227 62811]

IN RE:

Applicant:

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, 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 benefit 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 Service (CIS) does not receive the applicant's request for rescheduling by the date of the fingerprinting appointment; or, the applicant has not withdrawn the application. 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 June 1, 2001, during the initial registration period for El Salvadorans. The record contains a Fingerprint Notification dated February 13, 2003, advising the applicant that he was required to report for fingerprinting on April 3, 2003.

On June 9, 2003, the director issued a decision informing the applicant that his TPS application had been deemed abandoned and was denied for lack of prosecution due to the applicant's failure to appear for scheduled fingerprinting.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen pursuant to the regulations at 8 C.F.R. § 103.5. The applicant responded to the director's decision on December 29, 2003, six months after issuance of the director's decision. He stated that he never received notification that his application for TPS had been denied, and provided additional documentation in support of his claim, including lease documents, rental receipts, and CIS mailings 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. 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.

Subsequent to the decision and the appeal, the records of Citizenship and Immigration Services reflect that on June 17, 2005, the Federal Bureau of Investigation (FBI) processed a fingerprint results report pertaining to the applicant's fingerprints. The FBI report indicates that on August 23, 1985, the applicant was apprehended by the United States Border Patrol, at or near McAllen, Texas, and was placed in deportation proceedings

under the record number [REDACTED]. The record does not contain any documentation relating to the applicant's immigration proceedings under this earlier A-file number. It is noted that the applicant certified under penalty of perjury on the Form I-821, Application for Temporary Protected Status, that he had never been under immigration proceedings.

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.