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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAY 12 2006**

[EAC 02 225 53665]

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:



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 N. Gomez for

Robert P. Wiemann, Chief
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 he failed to appear for fingerprinting.

The record reveals that the applicant filed his initial TPS application on June 20, 2002. On August 25, 2004, 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 December 8, 2004, and advised the applicant that there was no appeal from this decision. The director informed the applicant that he could file a motion to reopen a petition or application denied due to abandonment with evidence that the decision was in error because:

1. The requested evidence was not material to the issue of eligibility.
2. The required initial evidence was submitted with the application or petition, or the request for initial evidence of additional information or appearance was complied with during the allotted period; or
3. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The applicant was given until January 10, 2005, to file a motion to reopen. The record contains no further correspondence.

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

Further, the record indicates that the initial TPS application, filed on June 20, 2002, was denied by the director on June 23, 2003, because the applicant had abandoned his application due to his failure to respond to a notice of intent to deny, dated April 28, 2003. The notice of intent to deny requests that the applicant submit evidence to show that he had "re-registered for temporary protected status between September 9, 2002, and November 12, 2002... even if the applicant's initial Form I-821 is still pending with the Service." It is noted that the applicant's initial TPS application, filed on June 20, 2002, is stamped with a denial date of December 8, 2004, the date of the aforementioned director's denial based on abandonment for failure to appear for fingerprinting.

As advised in the initial denial dated June 23, 2003, counsel for the applicant filed a timely motion to reopen in response to the denial. Counsel also filed a request for a waiver of fee for the motion to reopen. Neither counsel's motion to reopen nor his request for waiver of the fee for the motion to reopen was acted upon.

The applicant filed a second TPS application on July 11 2003, and that application was denied on August 19, 2003, because "in order for this re-registration to be approved, your previously filed Application for Temporary Protected Status (Form I-821) must have been approved."

On October 6, 2003, counsel submitted a letter stating, "this is an appeal from the denial of [REDACTED] application to re-register for Temporary Protected Status for Salvadoran, which was filed on July 11, 2003." It is noted that no I-290B, Notice of Appeal to the Administrative Appeals Office, had been filed.

The evidence contained in the record of proceeding does not support the director's initial denial decision, dated June 23, 2003. In addition, the applicant, on July 25, 2003, filed a motion to reopen the director's initial decision, along with a request to waive the fee for the motion to reopen. However, the director failed to issue a decision on the applicant's motion to reopen, and his request for the waiver of the fee.

It is noted that the record fails to contain sufficient evidence of the applicant's identity and nationality. It is also noted that the applicant indicated a previous arrest; however the Federal Bureau of Investigations fingerprint results report does not indicate any such arrest.

The director's decisions dated August 19, 2003 and December 8, 2004, will be withdrawn and the case will be remanded. The director shall review all records pertaining to this applicant and issue a new decision. The director may request any evidence deemed necessary to assist him with the determination of the applicant's eligibility for TPS.

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.