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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
[EAC 06 283 72424 –  
as it relates to  
WAC 01 206 55464]

OFFICE: Vermont Service Center

DATE: DEC 19 2007

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The re-registration application was denied by the Director, Vermont Service Center (VSC), on the ground of abandonment. It is now before the Administrative Appeals Office (AAO) on a motion to reopen. The case will be remanded to the director for further consideration and action.

The applicant is a 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 record shows that the applicant filed an initial Form I-821, Application for Temporary Protected Status, at the California Service Center on May 8, 2001 [WAC 01 206 55464]. It was approved on January 21, 2004. A subsequent re-registration application was filed at the CSC on March 7, 2005 [WAC 05 218 702960]. During the pendency of the re-registration application the CIS issued a Notice of Intent to Withdraw (NOIW) the applicant's TPS on September 29, 2005, based on a fingerprint results report from the Federal Bureau of Investigation (FBI) indicating that the applicant had been arrested in Oakland, California, on July 14, 2003, and charged at the Municipal Court in Hayward, California, with counts of petty theft and causing a disturbance with loud and unreasonable noise, both misdemeanors, which might make her ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant responded to the NOIW by submitting documents from the Alameda County Sheriff's Office and the Superior Court of California, County of Alameda, Hayward Hall of Justice, which appear to indicate that the applicant pleaded guilty to the second count and that no separate conviction was rendered on the first count. The applicant's re-registration application was subsequently approved at the CSC on January 28, 2006.

On July 7, 2006, the applicant filed another re-registration application [EAC 06 283 72424], which was administratively closed by the VSC on January 29, 2007. On January 30, 2007, the VSC Director issued a Notice of Denial of Re-Registration Due to Abandonment and Notice of Intent to Withdraw Temporary Protected Status, in which the applicant was advised that her re-registration application was denied on the ground of abandonment because she failed to appear for a biometrics (fingerprinting) appointment as scheduled on September 29, 2006, in Oakland, California, and that the CSC intended to withdraw the applicant's TPS for failure to re-register unless she submitted evidence of good cause for the failure to re-register.

A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. See 8 C.F.R. § 103.2(b)(15). The applicant responded to the CSC notices by filing a motion to reopen the re-registration application on the ground that she did not receive the biometrics appointment notice from Citizenship and Immigration Service (CIS), despite the fact that she continued to receive mail at her old address until January 2007. CIS records indicate that the applicant's motion to reopen was "approved" at the VSC on May 22, 2007,<sup>1</sup> and that the applicant's biometrics were subsequently collected in July 2007. Instead of issuing a new decision on the re-registration application, however, the VSC erroneously forwarded the case to the AAO in August 2007.

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<sup>1</sup> CIS records also indicate that a Form I-765, Application for Employment Authorization, which was filed in conjunction with the TPS re-registration application in July 2006, was initially denied with the TPS application on January 30, 2007, but subsequently reopened/reconsidered by service motion on May 22, 2007, and approved by service motion on August 1, 2007.

As provided in 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction of a motion to reopen (or a motion to reconsider) resides in “the official who made the latest decision in the proceeding.” Since the VSC Director made the latest decision in the re-registration application at issue here, he is the official with jurisdiction of the motion to reopen. Accordingly, the case will be remanded to the VSC Director for the issuance of a new decision on the re-registration application.

The AAO notes that no final action has been taken by the VSC Director with regard to the Notice of Intent to Withdraw the applicant’s TPS. The VSC Director shall address this matter as well.

As always in these proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The case is remanded to the director for further consideration and action consistent with the above.