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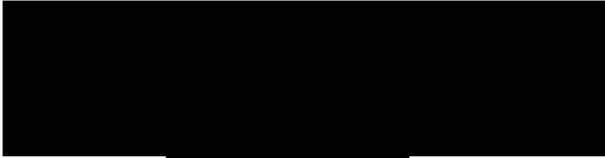
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



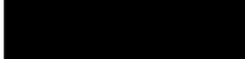
U.S. Citizenship  
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Services

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FILE:



Office: PHOENIX

Date:

**JAN 20 2010**

[WAC 03 085 53684  


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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant claims to be a native and citizen of El Salvador<sup>1</sup> 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 as abandoned because the applicant failed to appear for a scheduled TPS interview. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen within 30 days.

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). 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 TPS application on January 16, 2003.<sup>2</sup> On May 24, 2004, the applicant was requested to appear at the district office for an interview regarding his application. The applicant failed to appear for the interview; therefore, the director concluded that the applicant had abandoned his application and denied the application on July 19, 2004. The director erroneously advised the applicant that he could file an appeal from this decision within 30 days.

The applicant responded to the director's decision on August 19, 2004. The applicant requested that his TPS application be reopened and stated that he had appeared for fingerprinting as requested and he would have appeared for the interview if he had received notice. The applicant also provided additional documentation in support of his claim of eligibility for TPS.<sup>3</sup>

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<sup>1</sup> It is noted the applicant submitted a copy of a birth certificate with English translation, however, it was not accompanied by photo identification and the applicant failed to provide a passport or any national identity document from his country of origin bearing photo and/or fingerprint to establish his nationality and identity. It is further noted the applicant submitted a copy of an El Salvadoran birth certificate, without translation. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3).

<sup>2</sup> It is noted the initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record does not contain evidence that the applicant fell within at least one of the provisions for late registration described in 8 C.F.R. § 244.2(f)(2).

<sup>3</sup> It is noted that the applicant was convicted of a felony on June 30, 2007 in the state of Arizona. An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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.

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.