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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 07 2004
[SRC 02 104 54449]

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 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, on February 13, 2003. On May 14, 2003, the applicant filed a late appeal. The director issued a letter of Intent to Reopen on June 4, 2003, informing the applicant that it was the intent of Citizenship and Immigration Services (CIS) to reopen her case and deny it. The applicant was afforded 30 days from the date of that letter to submit additional evidence. The matter is now before the Administrative Appeals Office (AAO). 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 on February 13, 2003, after determining that the applicant had failed to submit sufficient evidence that she had “resided in the United States prior to February 13, 2001, and, since March 9, 2001.” The applicant was advised that she could file an appeal to this decision within 30 days of the denial decision.

The applicant filed an appeal to the director’s decision on May 14, 2003, and submitted additional evidence in support of the appeal.

The director treated the late appeal as a motion to reopen and on June 4, 2003, issued a letter of Intent to Reopen. This letter states in pertinent part:

On May 6, 2003, this office received your request for a Motion to Reconsider, [in] which you submitted detailed documentation that indicated that you have resided in the United States prior to February 13, 2001. However, you failed to submit equally detailed documentation that would show that you have resided in the United States since March 9, 2001....

Therefore, it is the intent of the Service to reopen the decision and deny it. You are hereby granted thirty days from the date of this letter to submit detailed documentary evidence that you have continuously resided in the United States prior to February 13, 2001. At that time a final decision will be made.

It is noted that the statements contained in the Intent to Reopen are contradictory in that the letter states both the applicant had already provided detailed documentation of her residence in the United States prior to February 13, 2001, and simultaneously asking her to provide detailed documentation for that same time period. The applicant also was not requested to provide documentation for the period since March 9, 2001, although the earlier portion of the letter indicated that this evidence was not submitted. Moreover, the Intent to Reopen, in fact, reopened the matter, requested additional evidence, and informed the applicant that a final decision would be made after a thirty-day period. The record, however, contains no further submissions from the applicant and contains no final decision from the director following the reopening of the case.

The matter was forwarded to the AAO in error, as the director had reopened the case and offered the applicant an opportunity to submit additional evidence prior to the issuance of a final decision. Therefore, the case will be remanded to the director for further consideration and action, and issuance of a final decision on the matter.

The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

It is noted that much of the submitted documentation on the applicant's behalf, referred to by the director in the Intent to Reopen, is in the name of the applicant's husband. The record, however, does not include the marriage certificate of the applicant and her spouse.

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.