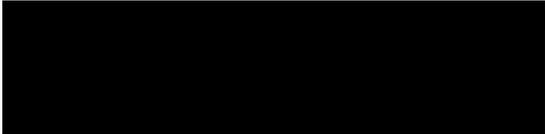


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DEC 14 2006

FILE: [REDACTED]
[SRC 01 255 54760]

Office: TEXAS SERVICE CENTER Date:

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, 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 her application by failing to respond to a request for evidence.

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 her initial TPS application on August 14, 2001. On January 7, 2003, the applicant was requested to submit additional evidence establishing her qualifying continuous physical presence in the United States during the requisite period. The applicant was also requested to submit photo identification or a national identity document bearing a photograph and/or fingerprint. The record indicates multiple attempts to mail the Notice of Intent to the applicant at her most recent address, as she provided on the October 1, 2002, re-registration application. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and denied the application on January 23, 2003.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days. The applicant responded to the director's decision; however, 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.

It is noted that the applicant initially requested the reopening of her application in a letter dated January 28, 2003, just five days after the director's denial decision. In that letter, the applicant stated she had received the Notice of Decision to Deny and Revoke, and could not understand why she had not received the request for additional evidence. The applicant stated that she had no intention of abandoning her application and did not want to do anything to jeopardize her ability to stay and to work in the United States.

The applicant subsequently submitted a Form I-290B, Notice of Appeal, on October 9, 2003. The applicant also submitted detailed evidence relating to her continuous physical presence in the United States during the requisite period. The applicant indicated she was appealing the decision of "9-29-03." It is noted that the decision dated September 29, 2003, pertains to the return of the applicant's TPS re-registration application, which noted that she was not required to register annually because her TPS application had been denied on January 23, 2003.

The record also includes the director's letter of October 10, 2003, informing the applicant that:

Your Motion to Re-open is being processed. Please do not re-submit your TPS application until you have been notified of a decision.

As noted earlier, because the director's decision was based on abandonment, the AAO has no jurisdiction over this case; however, it appears that the applicant has submitted sufficient evidence to satisfy the director's request in the Notice of Intent to Deny. 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.