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Washington, DC 20536



U.S. Citizenship and Immigration Services

MI



FILE:



Office: VERMONT SERVICE CENTER

Date:

DEC 11 2004

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.

Robert P. Wiemann

Robert P. Wiemann, Director
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 Honduras who indicated on her application that she entered the United States without a lawful admission or parole.

The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, for failure to respond to a request for evidence to establish her eligibility for TPS.

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 application on June 28, 1999. On July 5, 2001, the applicant was requested to submit additional evidence establishing her qualifying residence and physical presence in the United States. The applicant was also requested to submit evidence that she had a currently pending application for suspension of deportation or cancellation of removal. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Denial on January 3, 2002. 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 submitted a motion to reopen her case on November 22, 2002, more than 10 months after the denial was issued, and states that she never received the notice of denial of her TPS application. The applicant further states that she used the services of an incompetent notary public who did not send all the evidence attached to her original application. The applicant states that she has been denied due process rights entitlement. The applicant submits additional documentation in support of her claim.

The director accepted the motion as an appeal and forwarded the file to the AAO in error. The applicant, however, has submitted a motion to reopen that was filed outside of the required filing date parameters.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction on this case, and it may not be appealed to the AAO. Therefore, the case will be remanded and the director shall consider the motion.

It is noted that, although the applicant stated under penalty of perjury, that she was never arrested, the FBI fingerprint report indicates that she was arrested at McAllen, Texas on December 8, 1997, and placed under deportation proceedings, under the alias of [REDACTED]. It is also noted that one of the Employment Authorization Documents issued to the applicant, was erroneously noted as a TPS approval (A12), rather than a TPS applicant (C19).

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 director's decision is withdrawn. The matter is remanded for further action.