



U.S. Citizenship
and Immigration
Services

M

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

SEP 17 2004

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:

[REDACTED]

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

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prevent clearly unwarranted
invasion of personal privacy

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 his 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 his initial TPS application with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on March 29, 2001. On April 22, 2002, in a Request for Additional Evidence, the applicant was requested to submit additional evidence establishing his nationality. The director specified that this evidence: "may include a copy of your original birth certificate with an English translation, your passport, or your National I.D. card that has your photo on it." On July 31, 2002, in a Notice of Intent to Deny, the applicant was informed of the intent to deny his application and was provided 30 additional days to submit evidence of his nationality, as specified above. The director concluded that the applicant had failed to respond and, therefore, that the applicant had abandoned his application. The director issued a Notice of Decision to Deny and Revoke on September 27, 2002, advising the applicant that, while the decision, a denial due to abandonment, could not be appealed, the applicant could file a motion to reopen pursuant to the regulations at C.F.R. § 103.5.

Through counsel, the applicant submitted a Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals of Decision of District Director, motion to reopen on November 19, 2002, almost two months after the issuance of the director's decision. Counsel asserts that the denial due to abandonment was made in error because the requested information was previously provided. Counsel asserts that the applicant did not respond to the requests for evidence of his nationality because he received bad advice and because he believed that he had satisfied this requirement through submission of other identity documents. Counsel submits a brief, additional evidence, translations of nationality documents that had previously been entered into the record, and receipt notices from Citizenship and Immigration Services (CIS) to the applicant acknowledging receipt of his applications. Counsel also apologizes for the delay in submitting the motion, and bases the delay upon the applicant's misunderstanding the circumstances involved.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the record to the AAO. In general, when the director's decision is based on abandonment, the AAO has no jurisdiction over the case. The evidence of record, however, indicates that the denial due to abandonment was made in error.

The denial was based on the applicant having not responded to the request for additional information. However, with the initial application, the applicant submitted a photocopy of a Republic of El Salvador, Electoral Identification Card, bearing a photograph and fingerprint, issued on October 19, 1996. The applicant also submitted a State of North Carolina Identification Card issued on February 1, 1999. With his re-registration application, received by the INS on September 23, 2002, the applicant submitted a photocopy of a page of an El Salvador passport issued at Miami, Florida, on September 21, 2001. The passport page was entered into the record prior to the date that the Notice of Decision to Deny and Revoke was issued, and prior to the date of October 31, 2002, when this attempted re-registration was subsequently returned to the applicant due to a fee discrepancy. This re-registration application also contained a new address for the applicant.

In issuing the Notice of Decision to Deny and Revoke, it does not appear that the submission of the passport was reviewed, and the director did not use the most recent address provided by the applicant. For this reason, the director's decision will be withdrawn and the case will be remanded to the director for consideration and entry of a new decision.

It is further noted that the Notice of Intent to Deny and Revoke did not specify all the deficiencies and provide the applicant an opportunity to respond. The notice indicated only that the applicant should provide evidence related to his nationality. The record of proceedings as currently constituted, however, contains very limited evidence of the applicant's continuous residence and continuous physical presence in the United States for the requisite periods, consisting of photocopies of: two Western Union receipts dated December 22, 1999 and June 5, 2000; a State of North Carolina Identification Card issued on February 1, 1999; and, a page of an El Salvador passport issued at Miami, Florida, on September 21, 2001. The applicant must be apprised of the deficiencies that would constitute grounds for denial due to insufficient evidence of his continuous residence and continuous physical presence in the United States during the requisite periods and be afforded an opportunity to respond.

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.