



U.S. Citizenship  
and Immigration  
Services

M

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date:

SEP 3 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:

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.

*Cindy M. Somers*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**PUBLIC COPY**

**Identifying data deleted to  
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 The decision of the director will be withdrawn and the case will be remanded for further consideration and action.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 appear for scheduled fingerprinting.

The regulations at 8 C.F.R. § 103.2(e)(1), (2), and (4) describe the requirements for fingerprinting that the applicant must meet in order to comply with the requirements for this type of benefit application.

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). This regulation further provides that an application shall be considered abandoned and shall be denied if: an individual requested to appear for fingerprinting does not appear; Citizenship and Immigration Services (CIS) does not receive his request for rescheduling by the date of the fingerprinting appointment; or, the applicant has not withdrawn the application.

The regulation at 8 C.F.R. § 244.9(4)(c) states, in pertinent part:

*Failure to timely respond.* Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

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 application on May 7, 2001, and filed a subsequent application marked as a re-registration application in 2002. The applicant was not issued a notice of intent to deny or a request to submit additional evidence. On June 24, 2003, the director issued a Notice of Decision, informing the applicant that his TPS application had been deemed abandoned and was denied due to the applicant's failure to appear for scheduled fingerprinting. 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 Notice of Decision on September 9, 2003. The applicant states that he never received a notice requesting evidence or notification that his application for TPS had been denied. The applicant asserts that he had notified CIS of his new address promptly. The applicant states that he has been continuously present in the United States since January 2001. He does not provide additional documentation in support of his claim. The applicant's response to the Notice of Decision was received more than two months after the issuance of the director's decision.

It is noted that the applicant's initial TPS application of May 2001, provided the applicant's address [REDACTED]. The re-registration application sent in September 2002 provided his address as [REDACTED]. It also is noted that CIS database records reflect an address change was logged on September 11, 2002. The record also includes receipt notices, dated October 16, 2002, and January 15, 2003, relating to the applications for employment authorization, that were mailed to the applicant at the [REDACTED]. However, the record indicates that the Fingerprint Notification, advising the applicant to appear for fingerprinting on February 25, 2003, and the Notice of Decision to Deny, dated June 24, 2003, were both mailed to the original [REDACTED] address. The record reflects that the Fingerprint Notification was not mailed to the last known address. Pursuant to the regulation at 8 C.F.R. § 244.9(4)(c), it must be concluded that the denial due to abandonment was made in error. Therefore, the decision of the director will be withdrawn and the case shall be remanded for further consideration and action.

It is further noted that the application contains a Form I-601, Application for Waiver of Grounds of Excludability, which was received with the initial TPS application on May 7, 2001. The applicant indicates that he was apprehended by United States immigration officers in August 1988, was granted voluntary departure, left the United States, and then re-entered the United States. The record does not indicate that the Form I-601 has yet been adjudicated; the Form I-601 also must be adjudicated.

In addition, the applicant has not established that he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The pay stubs from "Independent Constructors, Inc." provide a different social security number for the applicant than appear on his Form I-821, and do not contain verifiable information about the company. The only other evidence relating to the applicant's continuous residence and continuous physical presence consists of two "Gigante Express" receipts dated in February and March 2001.

Finally, it is noted that the record includes a photocopy of some pages of the applicant's Republic of El Salvador passport, issued by the Consulate General, Houston, Texas, valid from December 1989 through December 1992. Page 50 of this passport, denotes an A file number [REDACTED]. This A-file number pertains to the immigration proceedings surrounding the applicant's November 1988 deportation from the United States.

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 decision of the director is withdrawn. The application is remanded to the director for further action consistent with the above and entry of a new decision.