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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



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FILE: [REDACTED]
[SRC 01 177 51056]

Office: Texas Service Center Date: APR 04 2005

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

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 application on April 11, 2001. On January 22, 2002, the applicant was informed that the record indicated that she had had an arrest, conviction, or confinement and she was therefore requested to submit all official arrest records and final court disposition. 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 September 17, 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 responded to the director's decision on November 17, 2003, more than a year after the issuance of the director's decision. The applicant requested that her TPS application be reopened and stated that she never received the letter requesting additional evidence. The applicant also stated that she really does have enough evidence that she is submitting with the appeal. The record indicates that the request for additional evidence and the Notice of Decision were mailed to the applicant's last known address. The record reflects that the applicant informed the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), of her new address when she submitted an application for re-registration on October 8, 2002. The record does not contain an earlier Form AR-11, Alien Change of Address Card, or notification from the applicant that her address had changed.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, 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 FBI fingerprint report indicates that the applicant was arrested by the Police Department, Houston, Texas, on January 14, 1996, and charged with "theft unclassified."

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.