

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]
[WAC 01 263 64648]

Office: CALIFORNIA SERVICE CENTER

Date: AUG 17 2008

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant claims to be 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 of proceeding contains the Federal Bureau of Investigation (FBI) fingerprint results report indicating that the applicant was arrested on December 3, 2001, in San Bernardino, California, for "petty theft retail/etc." On September 23, 2003, the applicant was requested to submit the final court disposition of this arrest and of any and all arrests in the United States. She was also requested to submit evidence to show that she had continuously resided in the United States since February 13, 2001, that she had been continuously physically present since March 9, 2001, and to provide documentation to establish her nationality. 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 February 26, 2004. The director erroneously advised the applicant that she could file an appeal from this decision within 30 days.

The applicant responded to the director's decision on March 31, 2004. The applicant requested that her TPS application be "reinstated." She states that she has been residing in the United States since January 1992, and that she has three United States citizen children. She submits additional evidence in an attempt to establish her qualifying residence and physical presence in the United States. It is noted, however, that the applicant failed to submit the requested final court disposition of her arrest.

The director accepted the applicant's response as an appeal 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.

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.