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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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FEB 10 2005

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER Date:

[SRC 01 190 62307]

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. Gomez for

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 appear for her scheduled fingerprinting appointment.

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 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receive his or her request for rescheduling by the date of the fingerprinting appointment; or, the applicant has not withdrawn the application.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 her initial TPS application with the Immigration and Naturalization Service, now CIS, on April 19, 2001, and filed a subsequent application marked as a re-registration application on October 7, 2002. On June 24, 2003, the director issued a Notice of Decision to Deny, informing the applicant that her TPS application had been deemed abandoned and was denied due to the applicant's failure to appear for scheduled fingerprinting on February 14, 2003. The director advised the applicant that, while a denial due to abandonment could not be appealed, the applicant could file a motion to reopen pursuant to the regulations at 8 C.F.R. § 103.5.

The applicant responded to the Notice of Decision to Deny on October 20, 2003, almost four months after the issuance of the director's decision. The applicant states that she went to the fingerprinting appointment, but was not provided with a receipt or proof that she appeared for fingerprinting. She asks that she be given another opportunity or alternative in order to obtain TPS. The applicant submits photocopies of her: Social Security Card; Employment Authorization document (EAD) under Category C19, and valid from July 31, 2001 through September 9, 2002; and a money order payable to "I.N.S." and dated August 29, 2003.

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.

The record reflects that the receipt notice for the appeal was mailed to the address as provided by the applicant on her applications and appeal notice. This receipt notice, however, was returned as "Not deliverable as addressed" by the United States Postal Service (USPS), which provided a forwarding address. The attempt to mail the receipt notice to the forwarding address given by the USPS was also returned as "Attempted Not Known" by the USPS.

It is noted that the record includes the INS letter dated June 5, 2001, acknowledging receipt of the applicant's fingerprint fee. The Fingerprint Notification indicates that the applicant was scheduled for fingerprinting on February 14, 2003. A search of CIS records reflects that there is no record that the applicant appeared and was fingerprinted on that date, and no fingerprint results processed by the Federal Bureau of Investigation (FBI) appear in the record or in the database.

It also is noted that the applicant indicated on her initial application that she had been in immigration proceedings, while on her re-registration application the applicant indicated that she had not been under immigration proceedings. The record also includes a Form I-601, Application for Waiver of Ground of Excludability, filed by the applicant with her initial TPS application. On the waiver application, the applicant states that in June 1999, she was apprehended by an Immigration and Naturalization Service officer, was interviewed, fingerprinted and released at the border of Douglas, Arizona. She states she received an order to appear in immigration court, but because she feared being deported she did not appear in court. She states that she admits her mistake and apologizes for her actions. The waiver application bears a notation, "Terminated 06-24-03," the date of the director's decision that the applicant had abandoned her application.

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.