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U.S. Citizenship
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FILE:

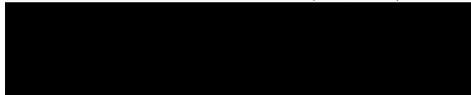


Office: Texas Service Center

Date:

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, 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 addressing the results of her Federal Bureau of Investigation's fingerprint report.

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 application on June 18, 2001. On July 8, 2003, the applicant was requested to submit the court dispositions for all past arrests. 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 December 4, 2003.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen. The applicant responded to the director's decision; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. 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 along with her appeal, applicant provides a signed affidavit submitted on her behalf by Mr. [REDACTED] Attorney at Law. It appears that Mr. [REDACTED] wishes to represent the applicant; however, Mr. [REDACTED] has not provided a Form G-28, Notice of Entry of Appearance as Attorney or Representative. Further, the record contains a Form G-28 from Mr. [REDACTED] of the Law Office of [REDACTED] PC, executed by the applicant on May 3, 2001. There is no evidence that Mr. [REDACTED] appearance as counsel has been withdrawn. Therefore, the decision will be furnished to only Mr. [REDACTED] and the applicant.

It is also noted that another record, [REDACTED] relating to the applicant's removal proceedings, was created on May 6, 2000.

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.