

identifying and deleted to
prevent clearly unwarranted
invasion of personal privacy

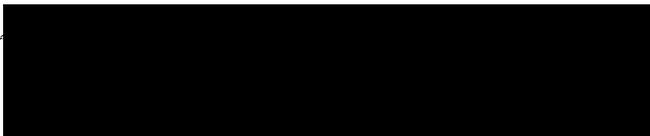
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 22 2005
[WAC 01 244 54709]

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 matter 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 to be fingerprinted or to request rescheduling of her fingerprint appointment.

If an individual requested to appear for fingerprinting or for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or if the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 July 2, 2001. On April 27, 2002, the applicant was mailed a Form I-797C, Fingerprint Notification, instructing her to report to the Immigration and Naturalization Service, now Citizenship and Immigration Services, office in Gardena, California, on June 14, 2002, to be fingerprinted. The applicant did not appear for her fingerprint appointment, nor did she request another fingerprint appointment.

Therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Denial on February 17, 2004. 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 March 22, 2004. The applicant acknowledges that she was still residing at the address to which the fingerprint notice was mailed, but claims that she never received the fingerprint notice. She further states that she is willing to appear to be fingerprinted if she is given the opportunity to do so.

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 matter 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 matter is remanded for further action consistent with the above and entry of a new decision.