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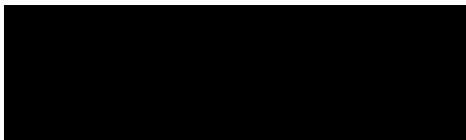
Office: TEXAS SERVICE CENTER

DATE:

OCT 27 2005

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:

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, 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 Honduras 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 scheduled fingerprinting, failing to respond to the Notice of Intent to Deny, and failing to provide Citizenship and Immigration Services (CIS) with an updated address.

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 benefit 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; 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receive his or her request for rescheduling by the date of the fingerprinting appointment; or, the applicant has not withdrawn the application.

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 on July 13, 1999. On August 30, 2003, the director issued a Notice of Intent to Deny, informing the applicant that CIS had no record indicating that she had appeared for fingerprinting on her scheduled date of October 8, 2002, or requested rescheduling of her fingerprinting appointment. The applicant was offered the opportunity to submit evidence showing that she did appear for fingerprinting, or explain her failure to do so.

Previously, on March 1, 2002, the applicant had been requested to submit evidence establishing her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. On April 18, 2000, the applicant had been requested to submit evidence that she entered the United States prior to December 30, 1998, and had continuously resided in the United States since that date. The record does not contain responses to any of these requests.

On October 9, 2003, the director determined that the applicant's TPS application had been abandoned and denied the application for lack of prosecution due to the applicant's failure to appear for her scheduled fingerprinting appointment, and failure to respond to the notices requesting additional evidence. 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 timely responded to the Notice of Decision, stating that she had not received Notification to appear for a fingerprinting appointment. She apologizes for not informing CIS of her new address, as she believed her address had been updated when she received her new employment authorization card. The applicant submits photocopies of her State of Texas Identification Card issued in 2003 [the record also contains an earlier Texas Identification Card issued in 1997], and a lease document dated June 10, 2000.

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 the applicant had provided her new address on application filings since June 8, 2000.

It is also noted that the record contains a photocopy of a Honduran national identity document that indicates it was issued to the applicant in Honduras on October 21, 2001, thereby precluding a favorable finding as to her continuous physical presence and continuous residence without further explanation and evidence. The applicant also submitted a photocopy of her employment authorization card (EAD) for the period of July 5, 2001 through July 5, 2002, reflecting validity under Category A12, reserved for those with approved TPS applications. It appears this card was issued in error, as the record does not contain any approved Form I-821, Application for Temporary Protected Status.

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.