



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAY 09 2006**

[LIN 02 201 50213]

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was initially denied by the Director, Nebraska Service Center, for failure to appear for fingerprints. The case was reopened by the Director, Nebraska Service Center on a Motion to Reopen. It was subsequently denied again for another reason. An untimely appeal was filed. The director of the service center heard the appeal on motion, and then denied the application again. It 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.

In the second denial on this application, the director determined that the applicant failed to establish she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant asserts that she has provided proof of residency.

The applicant filed her initial application for TPS on May 22, 2002. On September 9, 2002, the application was denied by the director for failure to appear for fingerprints. The applicant filed a motion to reopen on September 30, 2002. The director accepted the motion and reopened the proceedings on February 27, 2003. On June 19, 2003, the director determined that the applicant failed to submit sufficient evidence to establish continuous residence and continuous physical presence during the qualifying period, and denied the application again. The applicant filed another appeal on July 25, 2003. Rather than reflect the appeal as untimely filed and rejecting it, the director opened the proceeding again and denied the application again on August 25, 2003, determining that the applicant had not overcome the grounds of denial. The director erroneously advised the applicant that she could file an appeal from the August 25, 2003 decision within 30 days.

The applicant responded to the director's Notice of Decision on September 17, 2003. The applicant requested that her TPS application be reconsidered.

The director accepted the applicant's response as an appeal and forwarded the file to the AAO. However, as the Service Center director last heard the case on motion, [on an appeal that would have otherwise been rejected by the AAO as untimely filed], 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.