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U.S. Citizenship
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FILE:



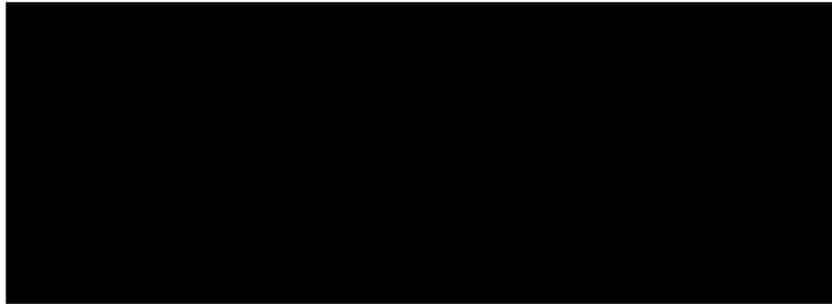
OFFICE: CALIFORNIA SERVICE CENTER

DATE: SEP 29 2006

[WAC 05 189 73996]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

The applicant is a native and citizen of El Salvador seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed a TPS application during the initial registration period on May 22, 2001, under [then U. S. Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS)] receipt number WAC 01 236 55574. The director denied that application on February 2, 2005, after determining that the applicant had abandoned her application based on her failure to appear for fingerprinting on August 17, 2004. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 7, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application on June 8, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel asserts that the applicant had not been informed of any appointment, other than the one for fingerprinting in May 2005. She further asserts that the applicant previously was represented by an unlicensed individual, and requests that the applicant's case be reopened based on ineffective assistance of counsel.

As provided in 8 C.F.R. § 244.10(c), the decision of the director to deny TPS shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial, and the alien shall be given written notice of his or her right to appeal a decision denying TPS.

A review of the record of proceeding indicates that on July 8, 2004, the applicant was sent a fingerprint notification to appear at USCIS San Francisco on August 17, 2004, for fingerprinting. The notice was sent to the applicant at [REDACTED]. It is noted, however, that the applicant's correct street address was [REDACTED]. The director denied the application based on abandonment on February 2, 2005. Again, this denial notice was mailed to the incorrect street address, [REDACTED]. The notices were mailed to an address other than the applicant's.

Therefore, the director's finding that the applicant abandoned her initial application will be withdrawn, and the case will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to El Salvadorans.

It is noted that the applicant subsequently was fingerprinted on May 11, 2005, and on May 1, 2006. The Federal Bureau of Investigation fingerprint results report and the record of proceeding indicate that the applicant, under the name of [REDACTED] was placed in removal proceedings on February 28, 1999, and she was subsequently ordered removed from the United States by an Immigration Judge in Los Angeles, California, on July 12, 1999.

It is further noted that documents contained in the record of proceeding are insufficient to establish that the applicant has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Documentary evidence furnished by the applicant only establishes her residence in the United States from 1999 through January 31, 2000 (when her child was born), and subsequent to the filing of the initial application on May 22, 2001, to the present time.

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 for appropriate action consistent with the above discussion and entry of a new decision.