



U.S. Citizenship
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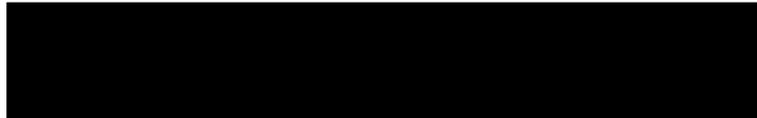
Office: VERMONT SERVICE CENTER

Date: APR 25 2007

[EAC 02 273 54249]

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.

Cindy N. Gomez (signature)

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 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 fingerprinting.

If an individual requested to appear for fingerprinting, or for an interview does not appear, 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 August 26, 2002. The applicant was sent a Form I-797C Fingerprint Notification, dated May 9, 2003 indicating that she was scheduled to appear for fingerprinting on June 18, 2003. The applicant failed to appear for fingerprinting; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Denial on March 19, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen.

In compliance with the director's instructions, the applicant submitted a motion to reopen her case. According to the applicant's counsel, and the applicant, the applicant did not receive the fingerprint notice and that receipt of some mail has been a problem for the applicant. It is noted that the notice was sent to the applicant's address of record.

The director accepted the motion as an appeal and forwarded the file to AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction on this case, and it may not be appealed to the AAO. Therefore, the case will be remanded and the director shall consider the motion.

It is noted that a Federal Bureau of Investigation (FBI) fingerprint results report was processed by the FBI on July 5, 2005, with a favorable result.

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.