



U.S. Citizenship
and Immigration
Services

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FEB 27 2007

FILE:



OFFICE: California Service Center

DATE:

[SRC 01 184 65479]
[WAC 05 221 80338]

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applications were denied by the Director, California Service Center. The decision on the initial TPS application is before the Administrative Appeals Office (AAO) on a motion to reopen. The decisions of the director on both applications will be withdrawn. The matter will be remanded to the director for the entry of new decisions.

Though the applicant's filings appear to have been prepared by others, no Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted. Accordingly, the applicant will be considered self-represented and the AAO's decision will be sent only to him.

The applicant is a 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 record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status [SRC 01 184 65479], on April 16, 2001. On September 4, 2003, the director issued the applicant a Notice of Decision, stating that "[o]n February 13, 2003, you were notified by this office to appear for fingerprinting" and that because he failed to appear for the scheduled fingerprinting (or reschedule the appointment) the TPS application was considered abandoned and denied in accordance with the regulation at 8 C.F.R. § 103.2(b)(13). After noting that a denial on the ground of abandonment cannot be appealed, the director advised the applicant that he could file a motion to reopen in accordance with 8 C.F.R. § 103.5.

On October 28, 2003, the applicant filed a motion to reopen and reconsider, asserting that he "never received any appointment letter related to fingerprints." Along with the motion the applicant submitted a copy of a new Form I-821 which bears a receipt stamp dated September 15, 2003. The applicant contended that he met all of the eligibility requirements for TPS.

On January 9, 2004, the director rejected the applicant's motion to reopen or reconsider on the ground that it was not filed within the 33-day period prescribed in the regulations at 8 C.F.R. § 103.5(a)(1)(i) and 8 C.F.R. § 103.5a(b). The director also advised the applicant that under 8 C.F.R. § 103.5(a)(1)(i) "failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner."

On February 10, 2004, the applicant, citing the foregoing regulation, filed a "motion for the application of discretion excusing delay in response," reiterating his contention that he did not willingly abandon his TPS application because he never received notice of a fingerprint appointment in February 2003. The applicant indicates that once he received the director's decision in September 2003, denying his TPS application on the ground of abandonment, he submitted a request to the Texas Service Center that his fingerprinting be rescheduled. As evidence thereof the applicant submitted a copy of a letter addressed to the service center, dated September 12, 2003, stating that "[t]he reason I missed my appointment is because I have not received any notice for that purpose" and requesting a new appointment date. On March 9, 2005, the service center forwarded the motion to the AAO.

A review of the record supports the applicant's claim that he never received notification of a fingerprinting appointment in February 2003. While an internal document of the Citizenship and Immigration Services (CIS)

district office in Charlotte, North Carolina, appears to indicate that on January 13, 2003, an appointment was set for 8:00 a.m. on February 13, 2003, there is no evidence that timely notice thereof was sent to the applicant. The record does include a Fingerprint Notification addressed to the applicant, scheduling an appointment at the CIS office in Charlotte, North Carolina, for 8:00 a.m. on February 13, 2003, but the notice date on the form was August 19, 2003 – six months after the appointment date. The district office has provided no explanation for this error.

The regulation at 8 C.F.R. § 244.9(c) – “*Failure to timely respond*” – provides as follows:

Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of interview, was not mailed to the applicant’s most recent address provided to the Service.

Based on the evidence of record, the AAO concludes that the district office failed to mail timely notice to the applicant of the fingerprint appointment scheduled for February 13, 2003. Accordingly, the AAO determines that there was “good cause,” within the meaning of 8 C.F.R. § 244.9(c), for the applicant’s failure to appear for the fingerprint appointment or to reschedule it prior to September 2003, when the director’s decision was issued. The director’s denial of the applicant’s initial TPS application on the ground of abandonment was therefore improper. The decision of the director will be withdrawn and the application remanded to the director for the entry of a new decision.

In the meantime, the applicant filed a TPS re-registration application [WAC 05 221 80338] on May 9, 2005. That application was denied by the director on February 21, 2006, on the ground that the applicant’s initial TPS application was denied, making him ineligible, under 8 C.F.R. § 244.17(a), to re-register for TPS.

Since the decision on the initial TPS application is being withdrawn, the decision on the re-registration application must also be withdrawn. Until the director issues a new decision on the initial registration, there is no legal basis to decide the re-registration application. Accordingly, the re-registration application will also be remanded to the director for entry of a new decision after the initial application has been decided.

The record includes a report from the Federal Bureau of Investigation (FBI) showing that the applicant was arrested on May 13, 2004, and charged with a misdemeanor offense of “assault on a female,” to which he pleaded guilty and was sentenced to 75 days “confinement” and 18 months probation. There is no final court disposition of this arrest, or any other arrest(s) the applicant may have incurred. The AAO notes that an alien is not eligible for TPS if the Secretary of the Department of Homeland Security finds that he or she has been convicted of a felony or two or more misdemeanors committed in the United States. See section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 the entry of new decisions on SRC 01184 65479 and WAC 05 221 80338.