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U.S. Citizenship
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FILE:



Office: California Service Center

Date:

MAR 05 2007

[WAC 05 225 83654]

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, 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 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.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 13, 2005, and indicated that she was re-registering for TPS.

On February 20, 2006, the director denied the re-registration application because the applicant's initial TPS application had been denied on June 7, 2003, and the applicant was not eligible to apply for re-registration for TPS.

The record reflects that the applicant's initial TPS application was filed, under CIS receipt file number SRC01 275 50735, on September 14, 2001. On June 7, 2003, the Texas Service Center director denied that application due to abandonment because the applicant failed to respond to a February 7, 2003, request for evidence to establish her eligibility for TPS. 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). 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).

On March 22, 2004, the applicant filed a motion to reopen the decision on her initial application. In the motion, the applicant indicated that she did not understand the reasons for the denial of her application. The director accepted the motion, and concluded that the applicant did not overcome the basis for the original denial. The director again noted that the applicant failed to respond to the request for evidence, mailed to the applicant on February 7, 2003, wherein the director requested that the applicant provide proof that she lived in the United States prior to February 13, 2001 and continuously resided in the United States from March 9, 2001 to the filing date of the application for TPS. The director, therefore, denied the motion to reopen.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS.

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). 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 AAO notes that while the record contains a notice of intent to deny dated February 7, 2003, that notice is not addressed to the applicant. According to the director, the notice was returned undeliverable; however, there is no addressee on the notice. The notice refers to the applicant and her A number. According to the applicant, she does not understand why her case was denied. Without evidence that the applicant received the notice there is no basis to determine whether the applicant failed to comply with the director's instructions.

As the director's decision on the initial TPS application was based on abandonment, the AAO has no jurisdiction in this case, and it may not be appealed to the AAO. Therefore, the case will be remanded and the director shall reconsider the March 22, 2004 motion.

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.