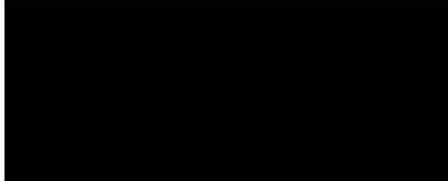




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

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FILE: [REDACTED]
[SRC 01 169 56305]

Office: Charlotte District Office

Date: SEP 04 2007

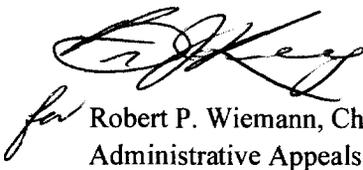
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICATION: 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Charlotte, North Carolina, 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 section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed a late initial TPS application on April 5, 2001, under CIS receipt number SRC 01 169 56305. The director denied that application for abandonment, on November 6, 2002, because the applicant failed to respond to a July 9, 2002 request for evidence to submit criminal record checks from jurisdictions where she has resided in the United States. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. It is noted, however, that the director stated that the applicant could appeal the denial.

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 appeal, the applicant states that she did not receive the director's request for evidence, and she first became aware of the request when she received the director's denial notice. It is noted, however, that the director's request for evidence was mailed to the applicant's last known address, which is same address used on the director's denial notice and the applicant maintained at time of appeal. With her appeal, the applicant submits a criminal record check from the Clerk of the Superior Court, County of Mecklenburg, State of North Carolina, which indicates that there are no records in that jurisdiction for applicant.

However, it is noted that the applicant has not submitted sufficient evidence to establish her nationality and identity. The applicant has furnished a copy of a birth certificate and English translation; however, she has not submitted a national identity document from her country bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1). In addition, the applicant has not submitted sufficient evidence to establish her continuous residence in the United States from February 13, 2001 and her continuous physical presence since March 1, 2001.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, as the director's decision was based on abandonment, 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