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U.S. Citizenship
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FILE: [REDACTED] OFFICE: Texas Service Center DATE: APR 22 2008
[SRC 01 231 64050]
[WAC 08 02651412, motion]

INRE: 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 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, Chief
Administrative Appeals Office

DISCUSSION: The applicant's initial TPS application was denied by the Director, Texas 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 section 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 respond to a request for evidence.

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 record reveals that the applicant filed her initial TPS application on May 30, 2001, within the initial registration, under Citizenship and Immigration Services (CIS) receipt number SRC 01 231 64050. The Director, Texas Service Center, denied that application on March 12, 2002, due to abandonment because the applicant failed to respond to a request for additional evidence establishing her national identity. A subsequent appeal of the director's decision was rejected by the AAO on February 10, 2005.

The applicant filed a TPS application on February 17, 2005, under CIS receipt number WAC 05 140 71979, and indicated that she was re-registering for TPS. The Director, California Service Center, denied that application on August 16, 2005, because the applicant's initial TPS had been denied and the applicant was not eligible to apply for re-registration for TPS. On September 21, 2005, the applicant filed an appeal of the director's decision, which was rejected by the AAO because the applicant failed to file a timely appeal.

On October 10, 2007, the applicant, through counsel, filed a motion to reopen her initial TPS application. Counsel for the applicant states that the applicant did not respond to the director's request for additional evidence because the applicant never received the notice requesting additional evidence.

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.

It is noted in the record of proceeding that on her initial 1-821, Application for Temporary Protected Status, the applicant listed _____ Houston, TX 77045 as her address. On August 28, 2001, the Service sent the request for additional evidence notice to _____ San Antonio, TX 78228, this notice, however, was returned to the Service as undeliverable. On October 26, 2001, the Service did send the notice to the correct address, _____ Houston, TX 77045.

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.