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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[SRC 01 213 57005]

OFFICE: Texas Service Center

DATE:

JUN 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 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 for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC). It is now on appeal before the Administrative Appeals Office (AAO). Though it cannot consider this case on appeal, the AAO will reopen the proceeding on Service motion, withdraw the director's decision, and approve the application.

The applicant is a national 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 on the ground that the applicant had abandoned her application by failing to appear for her required fingerprinting appointment.

On May 13, 2005, nearly two years after the denial of the application in August 2003, the California Service Center (CSC) received a Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), from [REDACTED], who stated that she was representing the applicant but neglected to submit the required Notice of Entry of Appearance (Form G-28). [REDACTED] will not be recognized as the applicant's representative, therefore, and this decision will be sent to the applicant at her last known address. The CSC erroneously accepted the Form I-290B as an appeal, instead of a motion to reopen, and forwarded it to the AAO. Since it followed an abandonment denial, and was not filed by either the applicant or her recognized legal counsel, the appeal would ordinarily be rejected. However, in view of the applicant's explanation in a letter she submitted with the Form I-290B that she did not receive the original fingerprint notification because it was sent to an old address, and the fact that the applicant's fingerprints have now been taken and processed, as indicated by a Federal Bureau of Investigation (FBI) fingerprint results report in the record, the AAO will exercise its discretion under 8 C.F.R. § 103.5(a)(5) to reopen this case on Service motion and consider the application on its merits.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:

- (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

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). A motion to reopen must be filed within 33 days of the date the decision was issued. See 8 C.F.R. § 103.5(s)(1)(i) and 8 C.F.R. § 103.5a(b).

The record shows that the applicant filed her initial TPS application with the Texas Service Center on May 14, 2001, during the initial registration period for TPS applicants from El Salvador. On August 13, 2003, the TSC Director denied the application on the ground of abandonment, citing the regulation at 8 C.F.R. § 244.9(c), after the applicant failed to appear for her scheduled fingerprinting appointment on March 26, 2003. There is no copy of the referenced fingerprint notification in the record that would identify the address to which the notification

was sent. The TSC Director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen under the provisions of 8 C.F.R. § 103.5. No such motion was filed within the requisite 33 days.

The record includes photocopies of the following documentation: a certified copy of the applicant's birth certificate, issued on March 19, 2001 by the Alcaldia Municipal de Santa Rosa de Lima in El Salvador, confirming that she was born in Santa Rose de Lima, El Salvador, on September 18, 1970; a Learner Permit issued to the applicant on January 26, 2001 by the State of North Carolina, Department of Motor Vehicles; and an earnings statement issued to the applicant for the pay week ending on April 14, 2001. The applicant has established her identity as an El Salvadoran national, her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001, as required under 8 C.F.R. § 244.2(a), (b), and (c) for TPS applicants from El Salvador. The record does not reveal that the applicant is inadmissible to the United States on any grounds.

Thus, the applicant has established her eligibility for TPS in accordance with section 244(c) of the Act and 8 C.F.R. § 244.2. Accordingly, the director's decision denying the application will be withdrawn. The appeal will be sustained and the TPS application will be approved.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met that burden.

ORDER: The director's decision of August 13, 2003, is withdrawn. The appeal is sustained, and the application is approved.