



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] OFFICE: California Service Center DATE: MAR 19 2007
[WAC 01 217 51940]
[WAC 05 153 70626]

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:
[REDACTED]

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.

Cindy M. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applications were denied by the Director, California Service Center. They are now on appeal before the Administrative Appeals Office (AAO). The decisions of the director on both applications will be withdrawn.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.

The applicant claims to be 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 for TPS [WAC 01 217 51940] on May 17, 2001. On March 4, 2004, the director sent a Fingerprint Notification to the applicant advising her to appear at the Citizenship and Immigration Services office in El Monte, California, for fingerprinting on April 13, 2004. On October 14, 2004, the director issued the applicant a Notice of Denial Due to Abandonment, stating that because the applicant failed to appear for the scheduled fingerprinting or request a rescheduling of the appointment, the TPS application was deemed 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 she could file a motion to reopen in accordance with 8 C.F.R. § 103.5.

On February 15, 2005, the applicant filed a motion to reconsider, asserting that she never received the Fingerprint Notification that the director issued in March 2004, though it was addressed to the same residence she gave on her TPS application in May 2001. The applicant acknowledged that she received the director's denial decision in October 2004, and that her address at the time – [REDACTED] in San Gabriel, California – was the same one she had when her TPS application was filed in May 2001. The applicant stated that she moved in January 2005 from her old address to her current address.

The record shows that new Fingerprint Notifications were sent to the applicant, and that the applicant was duly fingerprinted in April 2005. The director then sent a notice of reopening to the applicant on April 29, 2005.

On May 12, 2005, the director issued a Request for Evidence (RFE) which advised the applicant that the Federal Bureau of Investigation (FBI)'s fingerprint results report revealed an arrest, and requested that she submit a certified court disposition or related evidence showing how the subject charges were resolved. The RFE listed two arrests by the Norwalk Sheriff's Office, in California: (1) on January 28, 2004, charging the applicant with DUI (driving under the influence) of alcohol or drugs, and (2) on March 21, 2005, charging the applicant with DUI with a blood alcohol weight of 0.08% or more. The applicant responded to the RFE on August 2, 2005, by submitting the final court disposition of the Superior Court of California, County of Los Angeles, showing that on March 24, 2004 she pleaded guilty, with regard to the arrest on January 28, 2004, to a misdemeanor count of DUI with a blood alcohol weight of more than 0.08% and was placed on probation for three years. On March 21, 2005, the court found the applicant in violation of her probation and on April 6, 2005, the court remanded the applicant to custody. On April 14, 2005, the court ordered the applicant released from jail and reinstated her probation.

On August 31, 2005, the director issued a Notice of Intent to Withdraw the applicant's TPS based on her arrest record, indicating that she may have been convicted of a felony or two or more misdemeanors in the United States which would make her ineligible for TPS.¹ The applicant responded to the notice on October 18, 2005, by

¹ Since the applicant had not previously been granted TPS, the notice should have been called a Notice of Intent to Deny.

resubmitting the final court disposition originally submitted in August 2005 and claiming that it showed the applicant had been convicted of a single misdemeanor, which would not make her ineligible for TPS.

On January 23, 2006, the director sent a notice to the applicant advising that “we have reopened the above application or petition, or reconsidered the decision previously issued” and that she would receive another notice “once all action has been completed.” Since the director had already sent a notice to the applicant indicating that the case would be reopened on April 29, 2005, this second notice appears to have been redundant. Instead of deciding the reopened case on the merits, however, on March 27, 2006, the director incorrectly reverted to the applicant’s motion, as if the case had not already been reopened, and dismissed the motion on the ground that it was not filed within the 30-day time limit prescribed in 8 C.F.R. § 103.5(a). The director acted in error, therefore, because he dismissed a motion that had already been addressed and did not issue a decision on the initial TPS application based on the documentation submitted in response to the RFE and the Notice of Intent to Withdraw [Deny].

Meanwhile, the applicant filed a TPS re-registration application [WAC 05 153 70626] on February 4, 2005. This application was denied by the director on March 27, 2006, on the ground that the applicant’s initial TPS application was denied, making her ineligible to re-register for TPS. Since no decision had been rendered on the applicant’s reopened initial TPS application, however, there was no legal basis for the director to decide on her subsequent application for re-registration, as a decision on the re-registration application is predicated on the decision rendered on the initial TPS application.

Therefore, the case will be remanded to the director for the entry of a new decision on the applicant’s initial TPS application [WAC 01 217 51940], as well as on her current re-registration application [WAC 05 153 70626].

The AAO notes that the birth certificate in the record identifies the applicant as [REDACTED] whereas the documentation submitted to Citizenship and Immigration Services (CIS) and the Immigration and Naturalization Service (INS) since 2001 in connection with the applicant’s TPS applications identifies her last name as [REDACTED]. The applicant does not provide any documentary evidence of that name change, nor is there any evidence contained in the record. Therefore, additional evidence of the applicant’s identity must be submitted in any further proceeding before CIS.

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.