

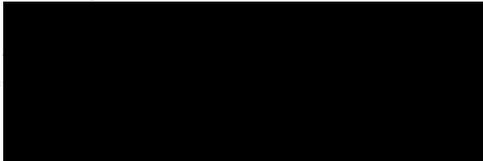
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
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Services

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FILE: [REDACTED]
[SRC 99 254 51050]

Office: TEXAS SERVICE CENTER Date: APR 11 2005

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, Director
Administrative Appeals Office

DISCUSSION: The 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 claims to be a native and citizen of Honduras 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 his application by failing to appear for his scheduled fingerprinting appointment.

The regulations at 8 C.F.R. § 103.2(e)(1), (2), and (4) describe the requirements for fingerprinting that the applicant must meet in order to comply with the requirements for this type of application.

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). This regulation further provides that an application shall be considered abandoned and shall be denied if: an individual requested to appear for fingerprinting does not appear; Citizenship and Immigration Services (CIS) does not receive his or her request for rescheduling by the date of the fingerprinting appointment; or, the applicant has not withdrawn the application.

The regulation at 8 C.F.R. § 244.9(4)(c) states, in pertinent part:

Failure to timely respond. Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

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 his initial TPS application on August 18, 1999. On July 30, 2003, the applicant was requested to submit additional evidence establishing his continuous physical presence in the United States since January 5, 1999. In response, the applicant submitted a letter dated August 4, 2003, from the Human Resource Director, Baker Drywall, Dallas, Texas, stating that the applicant had worked with the company since July 20, 1998. He also resubmitted his Texas Identification Card issued in 1999.

On February 27, 2004, the director issued a Notice of Decision to Deny, informing the applicant that his TPS application had been deemed abandoned and was denied due to the applicant's failure to appear for scheduled fingerprinting on September 24, 2003. The director advised the applicant that, while a denial due to abandonment could not be appealed, the applicant could file a motion to reopen within 30 days pursuant to the regulations at 8 C.F.R. § 103.5.

The applicant timely responded to the director's decision on March 17, 2004. The applicant states that he did not receive the notification for fingerprinting, and asks that his case be reopened.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. 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.

Further, while the appeal was pending, a Federal Bureau of Investigation (FBI) fingerprint results report was entered into the record. The FBI report indicates that it is an updated record as of February 3, 2005, issued after the applicant submitted civil prints under the name [REDACTED]. The report reflects that the applicant was arrested by the Dallas [Texas] Police Department on November 13, 1999, and was charged with "ASSLT CAUSES BODILY INJ." The applicant must have an opportunity to submit the required final court dispositions for the criminal charges against him that may have bearing on his eligibility for TPS.

This FBI report further reflects that at the time of his arrest the applicant indicated his place of birth as "Mexico." The record includes a Honduran birth certificate with translation, but does not contain a national identity document from the applicant's country of origin, containing a photograph and/or fingerprint. The applicant has not conclusively established his nationality.

In addition, it is noted that the employer letter on behalf of the applicant does not conform to the regulatory provisions at 8 C.F.R. § 244.9(a)(2)(i)(A) through (D), and therefore has limited evidentiary value. This document alone does not suffice to establish the applicant's continuous residence or continuous physical presence in the United States during the requisite periods.

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.