U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 1 2 2005
[WAC 01 288 55516]

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter 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 appear to be fingerprinted or to request rescheduling of her fingerprint appointment.

It is noted that the record contains a Form G-28, Notice of Entry of Appearance of Attorney or Representative, signed by [redacted] of [redacted], in Nashville, Tennessee; however, neither Ms. [redacted] nor Servicio Internacional is authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

If an individual requested to appear for fingerprinting or for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or if the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 application on August 30, 2001. On September 27, 2001, the applicant was mailed a Form I-797C notice instructing her to appear to be fingerprinted at the Citizenship and Immigration Services (CIS) office in Oakland, California, on October 25, 2001. The applicant appeared to be fingerprinted as scheduled. The record contains a Federal Bureau of Investigations (FBI) report dated January 13, 2002, indicating that there were no results from the applicant's fingerprint check.

On February 23, 2003, the applicant was requested to submit additional evidence to establish her continuous presence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The notice was sent to the applicant's current address, but the record does not contain a response from the applicant.

On June 27, 2003, the applicant was mailed a second Form I-797C notice instructing her to appear to be fingerprinted at the Citizenship and Immigration Services (CIS) office in Oakland, California, on July 22, 2003. The fingerprint notice was mailed to the applicant at the address to which the Notice of Intent to Deny was mailed, [redacted]n Pablo, CA [redacted]. The applicant failed to appear for her second fingerprint appointment as required; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Denial Due to Abandonment on March 10, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the Notice of Decision on April 19, 2004. The applicant states that she never received the Notice of Intent to Deny and, therefore, never had the opportunity to respond.

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 matter will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

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 matter is remanded for further action consistent with the above and entry of a new decision.