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U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[SRC 01 153 61995]

Office: TEXAS SERVICE CENTER Date: JAN 24 2005

IN RE: Applicant: [REDACTED]
a.k.a [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 N. Gomez
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 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 for her 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receive his or her request for rescheduling by the date of the fingerprinting appointment; or, the applicant has not withdrawn the application.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 her initial TPS application on March 27, 2001, and filed a subsequent application marked as a re-registration application on September 12, 2002. On December 11, 2002, the director issued a Notice of Decision to Deny and Revoke, informing the applicant that her TPS application had been deemed abandoned and was denied due to the applicant's failure to appear for scheduled fingerprinting. 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 responded to the director's decision on September 15, 2003, nine months after the issuance of the director's decision. The applicant requests that her case be reopened because she never received the notice for the fingerprint appointment. The applicant states that the apartment building manager on September 5, 2003, gave her the letter that the manager had been holding since January 2, 2003, because it did not have an apartment number marked on the envelope. The applicant submits copies of her initial application and re-registration

application and certified mail receipts indicating that her apartment number had been given on the documents she had submitted to CIS.

It is noted that the records of CIS indicate that the applicant was first scheduled for fingerprinting on May 10, 2001. The record of proceedings does not include a copy of that Fingerprint Notification that was mailed to the applicant. The applicant was subsequently mailed a Fingerprint Notification on April 4, 2002, that is included in the record of proceedings. The April 4, 2002, Fingerprint Notification indicates that it was mailed to the applicant's street address without the apartment number; the attached envelope indicates that the United States Post Office returned the letter as undeliverable due to an insufficient address. The Notice of Decision to Deny and Revoke dated December 11, 2002, also indicates that it was mailed without the applicant's apartment number.

Because the Fingerprint Notification was not mailed to the applicant's most recent address provided to CIS, the application should not have been denied for abandonment for failure to appear for required fingerprinting. Therefore, the applicant has overcome the service center director's sole reason for denial.

However, the applicant has not submitted sufficient evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. It is noted that the Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the year 2000 provides a different social security number for the applicant than appears on the photocopy of her social security card. The remainder of the evidence consists of copies of the applicant's: birth certificate with English translation; El Salvadoran cedula issued December 11, 2000; employment authorization card under category C19; Kmart Pharmacy receipt in the name of [REDACTED] dated January 23, 1999; and two Gigante Express receipts dated September 9, 1996, and February 26, 1997.

The case will be remanded. The director may request any evidence deemed necessary to assist her with the determination of the applicant's eligibility for TPS, and allow time for the applicant to submit evidence.

It is noted that subsequent to the applicant's response of September 15, 2003, the director sent another Fingerprint Notification dated October 28, 2003, requesting the applicant to appear for fingerprinting on November 21, 2003. Although this latest Fingerprint Notification was mailed to the applicant's full and complete address as provided to CIS, this notification was also returned by the United States Post Office, marked as "Return to Sender Undeliverable as Addressed."

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 new decision.