

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

MI

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 21 2005

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 respond to a request for evidence.

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).

The record reveals that the applicant filed her application on February 21, 2002. On November 18, 2002, the applicant was requested to submit additional 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. The record does not contain a response from the applicant. The director also noted that the applicant failed to appear for her fingerprint appointment on April 6, 2002, at the CIS office in El Monte, California. Therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Denial on September 18, 2003. The director erroneously advised the applicant that she could file an appeal with the AAO within 33 days of the date of issuance of the Notice of Decision.

The applicant responded to the Notice of Decision on April 20, 2004. The applicant states that she was fingerprinted at the CIS office in Columbus, Ohio, on April 18, 2001. The applicant provides a photocopy of a fingerprint worksheet indicating that she was fingerprinted in the CIS office in Columbus, Ohio, on April 18, 2001, in connection with a pending asylum application. It is noted that the applicant's response to the Notice of Decision was received more than six months after the issuance of the director's decision.

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 applicant has not provided any evidence to establish her qualifying continuous residence and 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 matter is remanded for further action consistent with the above.