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U.S. Citizenship  
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FILE: [Redacted]

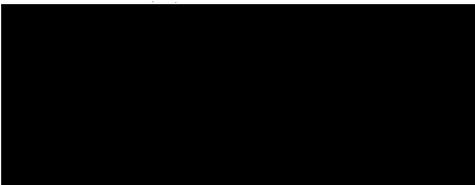
Office: TEXAS SERVICE CENTER Date: MAR 21 2005

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:



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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further 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 27, 2002. The director noted that the Federal Bureau of Investigation fingerprint results report indicates that the applicant was arrested and charged on April 15, 1998, with "ENTRY US ILLEGAL-CHARGED AS A FELONY." The applicant was, therefore, requested, in a notice of intent to deny dated June 18, 2002, to submit the court disposition of this arrest and all other arrests, and police history and clearance checks for every city in the United States where she lived for the past five years. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Decision on September 17, 2002. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

On October 17, 2002, counsel filed a motion to reopen and reconsider the applicant's case. Counsel stated that the director's decision was in error because the requested evidence was not material to the issue of eligibility and the required initial evidence was either submitted with the application, or the request for initial evidence or additional information or appearance was complied with during the allotted period. Subsequent counsel stated that the applicant acted diligently in hiring an attorney and attempting to comply with the director's request, and that to the best of the applicant's knowledge, the attorney submitted the requested evidence. Counsel provided additional documentation.

On November 14, 2002, the director granted the motion to reopen and reconsider and determined that: Citizenship and Immigration Services (CIS) had not received the required and requested evidence regarding the applicant's past arrest(s); the applicant had not established that she had not been convicted of a felony or two misdemeanors; and, the applicant had not submitted police history and clearance checks as requested. The director, therefore, dismissed the Motion to Reopen and Reconsider on November 14, 2002. The director advised the applicant that she could file an appeal from this decision to the Service Center Director who issued the denial within 30 days.

On December 16, 2002, counsel for the applicant appeals the director's decision to deny the motion. Counsel requests that CIS reopen the applicant's case based on a claim of ineffective assistance of the applicant's former counsel. She submits additional documentation, including a complaint filed by the applicant with the North Carolina State Bar against former counsel, and court documents for the applicant's misdemeanor conviction of illegal entry into the United States on April 23, 1998.

The director accepted the applicant's appeal and forwarded the file to the AAO. However, as the initial decision by the director was based on abandonment, the AAO has no jurisdiction over an appeal filed on any subsequent motion. Therefore, the case will be remanded to the director.

It is noted that the applicant was ordered deported from the United States on April 15, 1999. There is no evidence in the record that the applicant appeared at the INS Arlington, Virginia, district office on May 17, 1999, for her enforced departure.

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.