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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 09 2005

[WAC 02084 55746]

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, 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 because she failed to appear to be fingerprinted or to request that her fingerprint appointment be rescheduled.

If an individual requested to appear for fingerprinting or for an interview 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for rescheduling by the date of the fingerprinting appointment or interview, or if the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 January 9, 2002. On January 17, 2002, a fingerprint appointment notice was mailed to the applicant in care of [REDACTED] San Francisco, CA 94111." The applicant was instructed in the notice to appear at the CIS office in Oakland, California, on February 14, 2002, to be fingerprinted. The applicant failed to appear for her fingerprint appointment, or to request that her fingerprint appointment be rescheduled. Therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Denial on September 15, 2003. The director advised the applicant that, while the decision could not be appealed, she could file a motion to reopen within 30 days.

Counsel for the applicant responded to the Notice of Decision on October 16, 2003. Counsel requests that the matter be reopened "because the applicant never received the notice to be fingerprinted and neither did her attorney." It is noted that the fingerprint notice was mailed to the applicant in care of her attorney. It is further noted that the attorney's address on the fingerprint notice is the same address listed on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU).

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 a photo identification document to establish the applicant's identity.

It is further noted that the applicant's father, [REDACTED] filed a Form I-589, Application for Asylum and for Withholding of Removal, on July 15, 1995, CIS Receipt Number [REDACTED]. He requested that the applicant be included in his asylum application. The District Director, San Francisco Asylum Office,

San Francisco, California, denied Mr. [REDACTED] asylum application on December 5, 2003. The district director stated in the notice, "[s]ince your application for relief under NACARA has been approved and you are presently in legal status in the United States, this is the final action the INS will take on your asylum application at this time."

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.