



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

Date: **NOV 30 2005**

[EAC 02 261 51203]

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, Vermont 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 initially denied the applicant's TPS application after determining that she had abandoned her application by failing to appear for fingerprinting as requested.

If an individual requested to appear for fingerprinting does not appear, CIS does not receive his or her request for rescheduling by the date of the fingerprinting appointment, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 initial TPS application on August 9, 2002. A search of Citizenship and Immigration Services (CIS) records showed that the applicant failed to appear for fingerprinting; therefore, the director concluded that the applicant had abandoned her application and denied the application on June 16, 2003. 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 submitted a motion to reopen on July 18, 2003. The director granted the motion, and sent a Notice of Intent to Deny (NOID) to the applicant on March 8, 2004. The applicant failed to respond to the director's NOID request. The director denied the TPS application on June 10, 2004, due to the applicant's failure to respond to the NOID request.

The applicant responded to the director's June 10, 2004 decision on July 2, 2004. The applicant requested that her TPS application be approved. The applicant also provided additional documentation in support of her claim of eligibility for TPS.

A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. § 103.5(a)(6).

The director accepted the applicant's response to the director's latest decision as an appeal and forwarded the file to the AAO. However, in this case, the director denied the original application due to abandonment; since the original decision was not appealable to the AAO, the AAO has no jurisdiction to consider the current appeal from the director's denial of the subsequent Motion to Reopen. Therefore, the case will be remanded and the director shall consider the applicant's response as a Motion to Reopen.

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 decision.