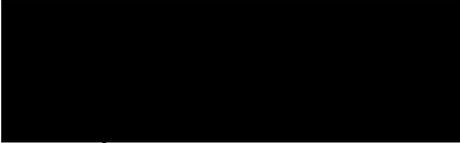


Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 31 2005
[WAC 01 198 50989]

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.

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 case will be remanded to the director for further action.

The applicant claims to be 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 a scheduled appointment for fingerprinting.

If an individual requested to appear for fingerprinting or for an interview does not appear, Citizenship and Immigration Service (CIS) does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).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 application on April 30, 2001. On January 20, 2004, the applicant was requested to appear for fingerprinting at the CIS office in Gardena, California, on February 13, 2004. The record does not contain evidence that the applicant appeared as required. Therefore, the director concluded that the applicant had abandoned her application and denied the application on June 10, 2004. The director erroneously advised the applicant that she could file an appeal from this decision within 30 days.

The applicant responded to the director's decision on July 15, 2004. The applicant claims that she did appear for fingerprinting on the scheduled date. She further claims that she also submitted supporting documents to establish her continuous residence and continuous physical presence as requested by the director. To support her claim, the applicant submits copies of documents she claims were previously furnished, and a copy of a CIS worksheet indicating that fingerprinting was completed for this applicant on December 26, 2002. However, because it was noted that the applicant's fingerprints were taken more than one year ago, she was scheduled to appear for re-fingerprinting on February 13, 2004. The applicant failed to appear as required.

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 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.