



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

SEP 06 2006

[WAC 01 197 55543]

IN RE:

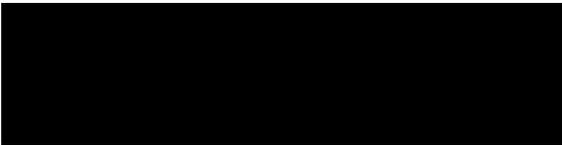
Applicant:



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, Chief
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 April 24, 2001. On February 22, 2003, the applicant was requested to submit evidence of identity and nationality and 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 applicant was also to provide a certified copy of the final court disposition of the following arrest:

Date of Arrest: June 16, 1999

Law Enforcement Agency: Police Department, Vernon, California

Charges:

1 - 148(A)(1) PC MISD - UNLW OBSTRUCT PEACE OFFICER

2 - 243(B) PC MISD - BATTERY ON PEACE OFFICER/EMER.

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 Denial on August 25, 2003. The director erroneously advised the applicant she could file an appeal with the AAO within 33 days of the mailing date of the Notice of Decision.

The applicant responded to the Notice of Decision on September 24, 2003. Counsel states that the applicant didn't respond to the Notice of Intent to Deny because she never received the notice. Counsel states that the applicant relied on the services of a notary public to file her initial TPS application and her subsequent applications for extension of employment authorization. Counsel explains that the notary public used her business address on the applications she filed on behalf of the applicant, rather than the applicant's address. Counsel submits the evidence requested in the Notice of Intent to Deny, along with a statement from the applicant. It is noted that the final court disposition indicates that the applicant was convicted of both misdemeanor charges listed above.

With regard to counsel's statement that the applicant did not receive the Notice of Intent to Deny because it was mailed to the notary public's address rather than directly to the applicant, it is noted that the Notice of

Intent was, in fact, mailed to the applicant at her last known address of record, [REDACTED]
[REDACTED]

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.

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.