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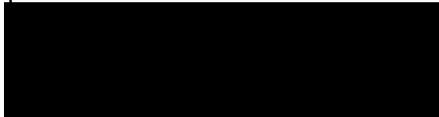
OFFICE: VERMONT SERVICE CENTER

Date: **OCT 05 2005**

[EAC 01 252 51685]

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 claims to be a native and citizen of Honduras 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 his 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 his application on June 7, 2001. On September 19, 2001, the applicant was requested to submit additional evidence establishing his eligibility to file as a late registrant. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on May 30, 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.

The applicant initially responded to the director's decision by filing a motion to reopen on June 14, 2002. The director dismissed that motion on November 13, 2002. The applicant subsequently filed another motion to reopen dated December 5, 2003. The director granted the motion on March 10, 2004, but subsequently affirmed the earlier decision to deny the TPS application on May 5, 2004. On June 3, 2004, the applicant appealed the director's decision.

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

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 initially 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.