

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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File:

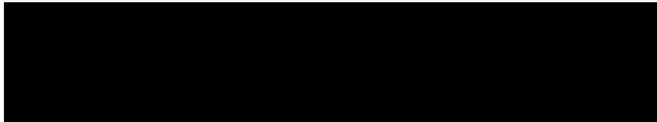


Office: Texas Service Center

Date:

DEC 18 2003

IN RE: Applicant:



Application: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

The applicant is a native and citizen of Honduras who indicated on her application that she entered the United States in December 1999 without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. ' 1254, for lack of prosecution (abandonment) because the applicant failed to respond to a request for evidence to establish her eligibility for TPS.

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 July 22, 2002. On February 10, 2003, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. ' 244.2(f)(2). The applicant was also requested to submit evidence establishing her qualifying residence in the United States and proof of her identity. 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 April 18, 2003.

In compliance with the director's instructions, the applicant submitted a motion to reopen her case. On motion, the applicant requested that her TPS application be reopened. According to the applicant, she has been living in this country since 1998 and is submitting additional documentation to support this claim. The applicant requests the opportunity to be legal in the United States. The applicant also states on appeal: "I have lived here without having a better opportunity in employment (sic) and also to pay my taxes.@ It is noted that on the date the appeal was received at the Texas Service Center, the applicant was 11 years of age.

The director accepted the motion as an appeal and forwarded the file to AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

Therefore, the case will be remanded and the director shall consider the motion. As the director's decision was based on lack of prosecution, the AAO has no jurisdiction, and the case may not be appealed to the AAO.



It should be noted that the applicant stated on her application that she entered the United States in December 1999, after the required entry date for TPS eligibility. On appeal the applicant states that she has resided in the United States since 1998. The applicant may not be eligible for TPS as a Honduran because she may have arrived in the United States subsequent to the eligibility period. Therefore, the director also is requested to address these conflicting claims.

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.