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U.S. Citizenship
and Immigration
Services

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APR 23 2004

FILE:

Office: TEXAS SERVICE CENTER Date:

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.

Cindy M. Gomez for
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 (AAO) on appeal. The case will be remanded to the director for further action.

The applicant is 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 determined that the applicant failed to submit additional evidence, as had been requested. The director, therefore, denied the application due to abandonment.

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 reflects that the applicant initially filed her TPS application on July 28, 1999. Based on the applicant's failure to respond to the director's request for additional evidence on April 8, 2000, the director concluded that the applicant had abandoned her application and issued a notice of denial on May 16, 2000. The applicant filed a new TPS application on July 5, 2000. On January 23, 2001, the director denied this application after determining that the applicant was ineligible for "re-registration" because her initial application was denied for abandonment.

The applicant appealed the decision of the director to the AAO. She requested reconsideration because she never received the director's request. The AAO noted that the second application filed by the applicant on July 5, 2000, should have been treated as a "new" application, rather than a re-registration. In a decision dated July 11, 2001, the AAO remanded the case to the director so that he could render a full adjudication of the second application.

On August 31, 2001, the director requested that the applicant submit additional evidence establishing her qualifying residence in the United States. On October 24, 2002, the director noted that although the applicant had established residence and physical presence in the United States during the requisite period, she had not established that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999; therefore, she was requested to submit evidence of her eligibility for late initial filing. 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 Decision to Deny on December 11, 2002, and again on January 16, 2003. In both Notices of Decision, 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 responded to the Notice of Decision on February 3, 2003. The applicant stated that she needed at least 30 days to obtain the requested evidence.

The director erroneously accepted the applicant's response as an appeal 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.