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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER Date:

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

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 The decision will be withdrawn and the case will be remanded for further consideration and action.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 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 March 1, 2002. On March 21, 2002, the applicant was requested to submit additional evidence establishing her eligibility for late registration. The director concluded that the applicant had failed to respond and, therefore, that the applicant had abandoned her application. The director issued a Notice of Denial on April 17, 2003, advising the applicant that, while the decision, a denial due to abandonment, could not be appealed, the applicant could file a motion to reopen pursuant to the regulations at C.F.R. § 103.5.

The applicant filed a Form I-290B, Notice of Appeal, on August 13, 2003, almost four months after the issuance of the director's decision. The applicant states that she did not know the date of the director's decision as she had never received it, and provides a new address. The applicant submits a statement and receipt notices from Citizenship and Immigration Services (CIS) to the applicant acknowledging receipt of her applications. The applicant also states that in March 1999, she filed a TPS application, with supporting evidence and money order, during the initial registration period, but that she never heard anything from CIS.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. In general, when the director's decision is based on abandonment, the AAO has no jurisdiction over the case. The evidence of record, however, indicates that the denial due to abandonment was made in error.

The denial was based on the applicant having not responded to the request for additional information. However, the record contains a set of documents with an envelope postmarked April 24, 2002, and with the gold response coversheet attached as required and date-stamped as received by CIS on April 26, 2002. This would constitute a timely response to the Notice of Intent to Deny and request for additional evidence dated March 21, 2002, and forwarded to the applicant under a coversheet dated April 1, 2002.

The attached routing sheet, however, indicates that this documentation was not entered into the record of proceeding until January 4, 2004. Because the documentation had not been properly entered into the record of proceedings in a timely manner, the director reasonably assumed there had been no response from the applicant. The record indicates, however, that a response was timely received and, therefore, the denial due to abandonment was made in error. For this reason, the director's decision will be withdrawn and the case will be remanded to the director for consideration and entry of a new decision.

It is further noted that the Notice of Intent to Deny did not specify all the deficiencies and provide the applicant an opportunity to respond. The notice indicated only that the applicant should provide evidence related to her eligibility for late registration. The record of proceedings as currently constituted, however, contains no evidence of the applicant's continuous residence and continuous physical presence in the United States for the requisite

periods, other than the few items submitted in the April 2002 response to the Notice of Intent to Deny. The applicant must be apprised of the deficiencies that would constitute grounds for denial and be afforded an opportunity to respond. In addition, the director should address the issue of the applicant's claimed earlier attempt to file for TPS in March 1999, during the initial registration period.

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 director's decision is withdrawn. The case is remanded to the director for further action consistent with the above and entry of a decision.