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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **AUG 15 2004**

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

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision is withdrawn; the application will be remanded for further consideration and action.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 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 July 2, 2002. On August 19, 2002, the applicant was requested to submit additional evidence establishing his qualifying residence in the United States. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and issued a denial letter on November 13, 2002. The director erroneously advised the applicant that he could file an appeal from this decision within 30 days.

The applicant responded to the director's denial letter on December 13, 2002. The applicant asked that his response be accepted as a motion. The applicant requested that his TPS application be reopened and stated that he never received the notice requesting additional information. The applicant also provided additional documentation in support of his claim.

The director 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 application will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the director's denial letter refers to the notice of intent to deny, yet states no specific reasons for denial. Under 8 C.F.R. § 103.3(a)(1), a denial must state the specific reasons for denial.

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 application is remanded to the director for further action consistent with the above and entry of a decision.