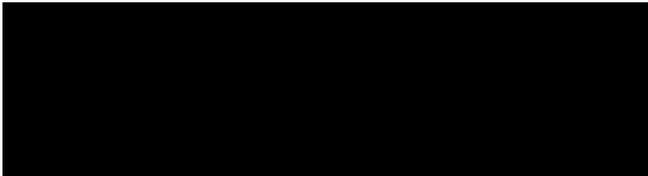




U.S. Citizenship
and Immigration
Services

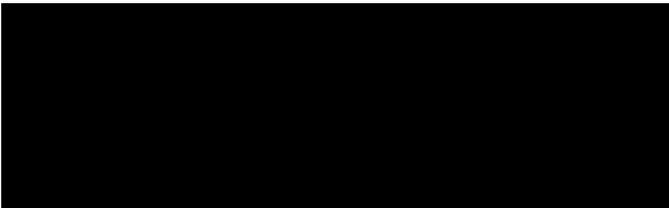


FILE: [REDACTED] Office: MIAMI DISTRICT OFFICE Date: DEC 21 2004
[SRC 99 221 50233]

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:



CONFIDENTIAL

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
Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent disclosure of information
invasion of personal privacy



DISCUSSION: The application was denied by the District Director, Miami, Florida. The applicant, through counsel, filed a motion that was forwarded to the Administrative Appeals Office (AAO). The matter will be remanded for further consideration and action.

The applicant is a native and citizen of Honduras who indicated on his application that he entered the United States on November 8, 1997, without a lawful admission or parole. The district 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, because he concluded that the applicant had failed to appear for a requested interview.

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 initial TPS application during the initial registration period on July 8, 1999. The record contains a notice dated April 2, 2004, addressed to the applicant, informing him that he had been scheduled for an interview at the Miami District Office on May 7, 2004. The applicant was requested to bring his Form I-688B, Employment Authorization Document, and to “[f]urnish proof of continuous physical presence since the last date on or prior to 12/30/1998, on which commencement was established.”¹ The director concluded that the applicant had abandoned his application and issued a Notice of Denial on July 7, 2004.

It is not clear from the record that the notification was actually mailed to the applicant. Further, a review of the CLAIMS mainframe report for SRC-99-221-50233, while noting all other transactions (including the receipt, receipt notice sent, fingerprint agency checks conducted, transfer of record from the Texas Service Center to the Miami District Office [all listed as SRC transactions], data change and the final denial [listed as MIA transactions], fails to reflect the issuance of the interview notice.

On appeal, counsel states that the applicant did not receive the notification to appear for an interview. Counsel further states that the applicant had no intention of abandoning his application and asserts that he would have appeared for the interview if he had received such notice.

It is noted that since the filing of the initial TPS application in 1999, the applicant has timely filed re-registration applications for each year from 2000 through 2003.

The matter is remanded to the director. The director may reschedule the interview and request any evidence deemed necessary to assist him with the determination of the applicant’s eligibility for TPS.

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 in accordance with the foregoing.

¹ Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999.