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U.S. Citizenship
and Immigration
Services



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FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [Redacted]

FEB 26 2004

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 N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 requested on October 16, 2000, to: (1) establish that he has continuously resided in the United States since December 30, 1998; (2) establish that he has been continuously physically present in the United States from January 5, 1999 to the date the application was filed; (3) establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999; and (4) submit a photo identification.

The director denied the application due to abandonment, pursuant to 8 C.F.R. 103.2(b)(13) which states, in pertinent part, that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. The director informed the petitioner that he could appeal the decision within 30 days.

8 C.F.R. § 103.2(b)(15), however, states, in part, that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. 103.5. According to 8 C.F.R. § 103.5(a)(6), a field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO.

In the instant case, the original decision to deny the application was not appealable to the AAO, as it was based upon the applicant's abandonment of the application. Therefore, the AAO does not have jurisdiction to consider the appeal that was filed as a result of the director's denial of the application.

The record reflects that requests for information were mailed to the applicant on February 26, 2000, July 31, 2000, and one dated "September." The "September" request indicated the applicant must comply with "requirements listed below," however, none were listed. In addition, the record contains evidence submitted by the applicant which has not been addressed by the director. The director must address the evidence furnished and make a determination as to its credibility. Any perceived shortcomings in the evidence must be specified by the director in order that the applicant may have the opportunity to file a meaningful appeal.

The appeal, therefore, will be remanded to the director to treat the appeal as a motion to reopen. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the AAO, for review.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.