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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FEB 26 2004

FILE: [redacted] Office: Vermont Service Center Date:

IN RE: Applicant: [redacted]

PETITION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF PETITIONER: Self-represented

PUBLIC COPY
Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. 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 determined that the applicant failed to respond to a request for evidence to establish his eligibility for TPS. The director, therefore, denied the application.

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 June 7, 2002. On December 16, 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 Notice of Denial on March 13, 2003. In compliance with the director's instructions, the applicant submitted a motion to reopen his case. On motion, the applicant requested that his TPS application be reopened. According to the applicant, he does not understand why his case was denied, and that when he filed his original application, he attached his evidence.

In compliance with the director's instructions, the applicant submitted a motion to reopen his case. On motion, the applicant requested that his TPS application be reopened. According to the applicant, he provided information to CIS which must have gotten lost. The applicant also provides additional documentation.

The director accepted the motion as an appeal and forwarded the file to AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction on this case, and it may not be appealed to the AAO. Therefore, the case will be remanded and the director shall consider the motion.

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.