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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: 10/10/2004

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

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U.S. CITIZENSHIP AND IMMIGRATION SERVICES
OCT 10 2004

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 reflects that the applicant filed the TPS application on January 25, 1999. In a notice of intent to deny the application, the applicant was requested to submit: 1) evidence that he had continuously resided in the United States since December 30, 1998; 2) evidence that he had been continuously physically present in the United States from January 5, 1999 to the date of filing the application; and, 3) final court dispositions for any arrests he had in the United States. The record does not reflect that the applicant responded to the notice. On November 18, 2003, the director denied the application due to abandonment.

The director erroneously advised the applicant that he could file an appeal from this decision within 30 days. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. The director's error does not, and can not, supersede the regulations. Therefore, the appeal must be rejected.

However, in the director's discretion, he may reopen the decision on a Service motion pursuant to 8 C.F.R. § 103.5(a)(5), or excuse the late filing of a new motion under the requirements of 8 C.F.R. § 103.5(a)(1)(i).

ORDER: The appeal is rejected.