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U.S. Citizenship
and Immigration
Services

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MAR 29 2004

FILE:  Office: TEXAS SERVICE CENTER Date:

IN RE: Applicant: 

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 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 his TPS application on April 3, 2002. In a notice of intent to deny dated June 12, 2002, the applicant was requested to submit evidence of his nationality, evidence that he has been physically present in the United States since January 5, 1999, to the date of filing his application, and evidence to establish his eligibility for filing after the initial registration period from January 5, 1999 to August 20, 1999. 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 July 25, 2002. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the Notice of Decision on June 11, 2003. The applicant requested that his TPS application be reopened and stated that he furnished all the documents requested by Citizenship and Immigration Services because he has been living in the United States since 1998. The applicant also provided additional documentation in support of his claim. It is noted that the applicant's response to the Notice of Decision was received more than 10 months after the issuance of the director's decision.

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

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.