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U.S. Citizenship
and Immigration
Services



FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 24 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, 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 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 her 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 her TPS application on February 1, 1999. On August 26, 2000, the applicant was requested to submit: (1) evidence of her residence in the United States; (2) police clearances from every city where she has lived in the United States; (3) certified court disposition of her arrest in 1985 for petty theft; (4) a full explanation of the details of her exclusion, deportation or removal; and (4) documentation to clarify the discrepancies of her claimed nationality as Honduran on her TPS application, and her claimed nationality as Guatemalan on her asylum application. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Denial on March 9, 2001. The director erroneously advised the applicant that she could file an appeal from this decision within 30 days.

The applicant responded to the director's Notice of Decision on April 9, 2001. The applicant states that she never received the director's August 26, 2000, request for additional evidence, and that she is now providing additional documentation.

The director 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.

It is noted that the record of proceeding contains an outstanding Warrant of Deportation/Removal, Form I-205, issued on December 16, 1989, in Los Angeles, California.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.