



U.S. Citizenship  
and Immigration  
Services

10/11



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: [REDACTED]

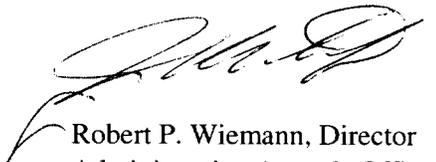
IN RE: Applicant: [REDACTED]

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 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 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 shows that the applicant filed her Form I-821, Application for Temporary Protected Status, on May 21, 2003. On October 10, 2003, the applicant was requested to provide evidence to establish her eligibility for late registration, evidence to establish continuous physical presence in the United States since January 5, 1999, and evidence of nationality. The director denied the application on December 2, 2003, based on a finding that the applicant had abandoned her application by failing to respond to a request for additional evidence.

On appeal, the applicant claims that she responded to the director's request for additional evidence, but forgot to include the Form I-797C, Intent to Deny Processing Coversheet. She submits correspondence dated November 25, 2003, from the California Service Center stating:

We are unable to process your mail request until you provide the following required information and a copy of a Form 797C (Notice of Action), and return this information to the California Service Center (CSC).

A handwritten notation appears on the letter stating, "evidence missing." It would appear that, even if the applicant did respond to the notice as she claims, she failed to provide the requested evidence.

The director erroneously advised the applicant that she could file an appeal from this decision within 30 days. As the director's decision was based on abandonment, the AAO has no jurisdiction in this matter. The director's error does not, and cannot, 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.