



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy

*MM*

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: **SEP 02 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.

*Cindy N. Gomez*  
*for*

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 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 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 reveals that the applicant filed her initial TPS application on June 28, 2002. On August 15, 2002, the applicant was requested to submit additional evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant was also requested to submit evidence of her nationality and of her eligibility for late registration. The applicant was asked to provide a copy of her marriage certificate and photo identification.

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 Decision denial on October 30, 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 did not respond to the Notice of Decision until September 3, 2003. The applicant requests that her TPS application be accepted and states that she is willing to demonstrate that she lived in the United States since 1998. The applicant did not provide additional documentation in support of her claim. **It is noted that the applicant's response to the Notice of Decision was received on September 3, 2003, approximately one year after the issuance of the director's decision.** It is further noted that the applicant provided the same return address on the notice of appeal as was provided on her initial application, and to which the correspondence concerning her TPS case has been mailed. The applicant offered no explanation for her failure to file within the allotted 30-day period.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen 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.

It is also noted that on the Form I-821, Application for Temporary Protected Status, the applicant indicated her date of entry into the United States as November 30, 1998, and indicated that she has never been under immigration proceedings. The record, however, contains a Federal Bureau of Investigation (FBI) report pertaining to the applicant's fingerprints. This report reflects that the United States Border Patrol, McAllen, Texas, apprehended the applicant on February 24, 1999, and placed her in removal proceedings under the name Janina Aguilar-Godoy, file number A77 483 739. The fingerprint report indicates her date of birth was stated as both December 26, of 1971 and of 1972. CIS records reflect that the Immigration Judge ordered that the applicant be removed from the United States on July 12, 1999. In light of the applicant's apprehension while attempting entry into the United States in February 1999, the applicant has not established that she maintained continuous residence and continuous physical presence in the United States during the requisite

periods. Further, she attested to certain facts on her TPS application under penalty of perjury that have not been satisfactorily resolved.

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.