

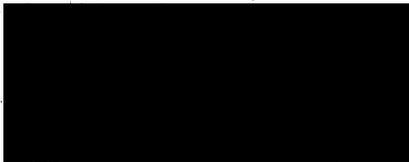
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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



*MI*

FILE:

Office: TEXAS SERVICE CENTER

Date: **SEP 02 2004**

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.

*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 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 reveals that the applicant filed his application on June 16, 1999. On November 21, 2002, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant was sent a Final Notice of Intent to Deny and Revoke dated January 9, 2003, in which he was requested to submit photo identification or a national identity document, such as a photocopy of his passport or national identification card. 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 Decision to Deny and Revoke on April 29, 2003, based solely on the applicant's failure to provide a national identity document. 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 to Deny and Revoke on September 19, 2003. The applicant stated that he was filing a notice of appeal with the AAO and submitted in support of his claim, a photocopy of the cover, observations, and biographic pages of his Honduran passport issued on August 6, 2003, by the Consulate General, Houston, Texas. **It is noted that the applicant's response to the Notice of Decision was received more than four months after the issuance of the director's decision.**

It is noted that the applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence during the requisite time periods.

It is further noted that the applicant indicated on the Form I-821, Application for Temporary Protected Status, that he had previously been under deportation proceedings in Minnesota, and was "deported from job on 10/28/98."

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