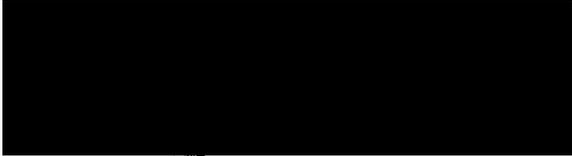




U.S. Citizenship
and Immigration
Services

WV



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

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 stated to be a native and citizen of Nicaragua 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's mother filed the initial application on August 28, 2003. It is noted that the applicant is currently seven years of age, and that [REDACTED] her mother, signed the application on the applicant's behalf. On October 8, 2003, the applicant was requested to submit additional evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit 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 November 18, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen pursuant to 8 C.F.R. § 103.5.

The applicant responded to the Notice of Decision on December 29, 2003. [REDACTED] signed the Form I-290B on behalf of the applicant, and states that the applicant is very interested in being legal in this country and has lived in the United States since 1998. [REDACTED] writes that she and her daughters do not have much proof of living in the United States because there are many things that make their lives difficult as immigrants. The applicant also provided additional documentation in support of her claim and resubmitted some documentation that had previously been entered into the record. **It is noted that the applicant's response to the Notice of Decision was received more than 30 days after the issuance of the director's decision.**

In response to the director's denial, it also is noted that the record includes a photocopy of the biographic pages of the applicant's Nicaraguan passport, issued by the Consulate General, Miami, Florida on December 4, 2003. The passport indicates the applicant's date of birth as August 22, 1996, while on the Form I-821, Application for Temporary Protected Status, and Form I-765, Application for Employment Authorization, the birth date is noted as August 30, 1996. The record also includes two different birth certificate documents with English translations. Both documents, purported to be photocopies of original documents, bear obvious indications of alteration on the lines relating to the applicant's name, date of birth, place of birth, and parent's names, and provide two different birth dates for the applicant. Therefore, the applicant's identity and nationality also are in question. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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.

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.