



U.S. Citizenship
and Immigration
Services

MI

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER Date:

SEP 20 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

PUBLIC COPY

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

Robert P. Wiemann, Director
Administrative Appeals Office

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 application for TPS on February 27, 2002. On March 19, 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 eligibility for late registration. 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 to Deny and Revoke on August 24, 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 submitted a response on October 7, 2003. The applicant indicates that she is appealing a decision dated "August 6, 2003." It is noted that the record as currently constituted does not contain a decision of that date. The applicant requests that her TPS application be accepted and states that she has proof and 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 more than one year after the issuance of the director's decision.**

It is noted that the applicant submitted a photocopy of her employment authorization card (EAD) indicating approval as a TPS applicant under 8 C.F.R. § 274a.12 (a)(12) valid from March 7, 2002 through July 5, 2002.

It is noted that in a June 20, 2002, application for re-registration, the applicant indicated that her address had changed from Sophia, North Carolina, to Ft. Lauderdale, Florida. The record includes a Receipt Notice from the Texas Service Center mailed to the applicant on June 21, 2002, to the Florida address, acknowledging her application for employment authorization. The director's decision of August 24, 2002, two months later, however, was mailed to the applicant's prior address in North Carolina. In her decision, the director noted that pursuant to 8 C.F.R. 265.1 the applicant was required to report her address change within 10 days on Form AR-11.

The applicant did not address the change of address issue and 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 initial Form I-821, Application for Temporary Protected Status, the applicant indicated her date of entry into the United States as November 1998, and indicated that she has never been under immigration proceedings. In subsequent applications, the applicant indicated her date of entry as

December 12, 1998, and again indicated that she had never been in proceedings. The record, however, contains a memorandum indicating that the applicant has been identified in alien database systems, and that another record, [REDACTED] pertains to the applicant. CIS records reflect that the documentation in the other A-file record of proceedings indicates that: the applicant entered the United States as a B-1 visitor on December 12, 1999; charging documents were issued in 2000; and, a Warrant of Deportation was issued on February 27, 2001.

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.