

PUBLIC COPY

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

identifying cases to  
prevent clearly unwarranted  
invasion of personal privacy



MM

FILE: [REDACTED]  
[SRC 03 218 55458]

Office: TEXAS SERVICE CENTER

Date: AUG 29 2005

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.

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 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 August 5, 2003. In her decision, the director incorrectly states that on "February 4, 2007," the applicant was requested to submit additional evidence establishing his continuous residence in the United States. That document is not a matter of record. The director concluded that the applicant had abandoned his application and denied the application on March 17, 2004. 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 director's decision on April 16, 2004. The applicant requested that his TPS application be reopened and stated that if he had known, he would have filed his papers in a timely manner. The applicant further stated that he did not want to lose his job permit, employment opportunities and the chance to pay his taxes.

The applicant provides additional documentation in support of his claim.

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 does not have jurisdiction over this case. Therefore, it will be remanded and the director shall consider the applicant's response as a motion to reopen.

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.