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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: Texas Service Center Date: **FEB 02 2005**

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:

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

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 July 14, 2003. On September 29, 2003, the applicant was requested to submit additional evidence establishing his qualifying residence and physical presence in the United States. The applicant was also requested to establish his eligibility for late initial registration. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on January 8, 2004.

The applicant responded to the Notice of Decision on February 17, 2004, more than 33 days after the issuance of the director's decision. The applicant states that he did not apply at the beginning of the program because he was afraid of being deported. The applicant further states that he did not have any proof of his presence and residence because he did not have an identification card and therefore could not obtain a work permit. The applicant also states that he did respond to the director's request; however, no evidence of this assertion is included in the record.

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; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. 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.