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

MI

[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **JAN 24 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.

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 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 TPS application on August 26, 2002. On May 6, 2003, the applicant was requested to submit additional evidence establishing her eligibility for late registration. The applicant was also requested to submit photo identification or a national identity document bearing a photograph and/or fingerprint. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and denied the application on August 20, 2003.

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 within the allotted 30-day period 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.

In the applicant's request to reopen her case, she states that she is submitting post office receipts as evidence that she responded to the request for additional evidence. It appears, however, that the materials submitted under the June 2, 2003, mailing receipt date correspond to the applicant's re-registration application received by the Texas Service Center on June 5, 2003, and not to the response for additional evidence.

It is also noted that the applicant has not established her continuous residence and continuous physical presence in the United States during the requisite periods. With her request to re-open her case, the applicant submitted generic shopping receipts, and other documentation that does not bear any customer name, including: a money order dated April 23, 2002; a credit statement dated October 1, 1998; and, a water and sewer bill dated November 13, 2001. In addition, the May and July 1999 utility bills submitted on motion appear to have been altered. Some of the documentation previously entered into the record also appears to have been altered, such as the September 30, 2000, doctor's appointment. Further, the letter from Miami Beach Community Health Center, Miami Beach, Florida, indicates that the applicant missed an appointment that was scheduled for September 28, 1998, but the letter itself is dated as of March 5, 1998, or six months prior to the appointment she was stated to have missed. The initial Form I-821, Application for Temporary

Protected Status, indicates that the applicant initially entered the United States on March 27, 1997. A subsequently filed Form I-821, however, indicates that the applicant entered in March 1998. Additionally, her Honduran national identity document indicates that it was issued to her in Honduras on September 12, 1997. 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).

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.