



U.S. Citizenship
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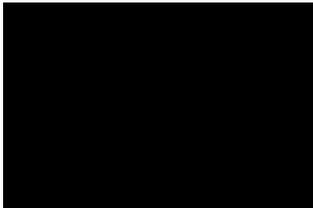
Office: TEXAS SERVICE CENTER

Date: **NOV 02 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:



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 M. Gomez
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 July 10, 2003. On September 29, 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 evidence establishing her continuous physical presence in the United States since January 5, 1999. In addition, the applicant was requested to submit photo identification or a national identity document from her country of origin 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 January 7, 2004.

The applicant, through a previous representative, responded to the director's Notice of Decision on February 12, 2004. The applicant states that she did not submit the requested evidence on time because when she asked the school where she studied to provide documents, they did not provide her with any documentation. The applicant also states that when she returned to the school and asked again for documents, that they then gave her the submitted report cards.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen. 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.

It is noted that current counsel on June 21, 2004, submitted to the Executive Office for Immigration Review, an Application for Redetermination of Custody Status, based on the applicant's apparent criminal charge currently pending at Dallas, Texas, based on "aggravated assault deadly weapon." Counsel also submitted additional evidence in support of the motion including: a translation of the applicant's birth certificate [a copy of the original upon which the translation was made was previously entered into the record]; the biographic page of her Honduran passport issued on July 2, 1996, by the Consulate General, Houston, Texas [a more legible copy was previously included in the record]; the Employment Authorization cards of her mother, [redacted] and of a [redacted] of El Salvador, both of whom were

issued employment authorization under Category A12, with validity through January 5, 2005; and, the applicant's academic records.

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.