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**U.S. Citizenship
and Immigration
Services**

MI



FILE: [REDACTED]
[SRC 99 218 53220]

Office: Texas Service Center

Date: **NOV 03 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC), 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 7, 1999. According to the record of proceedings, on June 9, 2000, the applicant's case file, along with his TPS application, was forwarded by the TSC to the Miami District office for processing. On January 29, 2001, the applicant was requested by the Miami district director to submit additional information in support of his TPS application. Specifically, the applicant was requested to submit the following: a police clearance from the Miami Metro Police; certified copies of his arrests; and evidence to establish that he entered the United States prior to December 30, 1998, and that he has continuously resided in the United States since his entry. The district director's request was returned as undeliverable. Therefore, the district director concluded that the applicant had abandoned his application, and denied the application on May 17, 2001.

Subsequently, the applicant's case file was returned to the TSC. On March 6, 2002, the applicant was requested again to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The TSC director's request was also returned as undeliverable. Therefore, the director concluded that the applicant had abandoned his application and denied the application on December 10, 2002. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen under 8 C.F.R. § 103.5.

The applicant responded to the director's December 10, 2002 decision on October 20, 2003. The applicant stated that he did not receive the request for additional evidence, and that the director made an error in sending the request to his previous address at [REDACTED]. He also stated that he filed a subsequent TPS application in 2001 (SRC-01-254-55-751) and had received a Notice of Action dated August 27, 2001 indicating his current address. A review of the record reflects that the applicant had informed the Service of his address changes on his subsequently filed TPS re-registration applications; however, the director erred by using the applicant's old address of [REDACTED] that was indicated on his initial application.

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.