

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE: [REDACTED]
[WAC 00 229 52792]

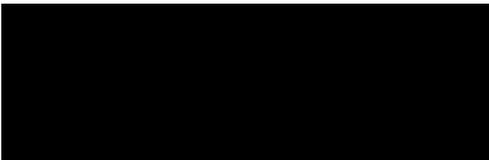
Office: TEXAS SERVICE CENTER

Date: NOV 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:



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, 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 matter 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 application on June 6, 2000. On June 27, 2003, the applicant was requested to submit additional evidence to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. The applicant was also requested to submit photo identification or any national identity document from her country of origin and to establish her eligibility for filing after the initial registration period. Notice was mailed to the applicant at her address of record. The record does not contain a response from the applicant although it does contain evidence that was forwarded by the applicant in response to requests for evidence that were received by the applicant from the Director of the California Service Center. However, the director concluded that the applicant had abandoned her application and issued a Notice of Denial on March 3, 2004. The director advised the applicant that the decision could not be appealed, but that the applicant was not precluded from filing a new application with a new fee.

Counsel responded to the Notice of Decision on April 2, 2004. In her response, counsel addressed the late initial filing issue, outlined evidence submitted in behalf of the applicant concerning her continuous residence and continuous physical presence in the United States and argued that a minor child from Honduras does not typically have a photo documentation. The applicant also provided additional evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States.

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 has no jurisdiction over this case. Therefore, the matter 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 matter is remanded for further action consistent with the above and entry of a new decision.