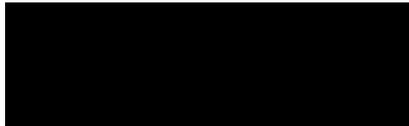


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M1

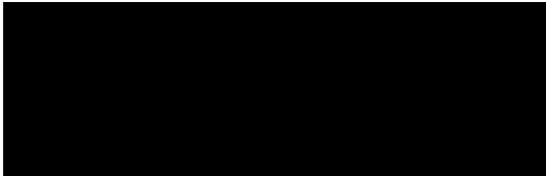
FILE: [REDACTED]
[SRC 01 233 64443]

Office: TEXAS SERVICE CENTER Date: OCT 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:



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.

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 motion. 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 initial TPS application on May 28, 2001. On April 6, 2002, 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 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 27, 2002.

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 on October 1, 2003. The applicant asserts that she was never informed of the denial in her case, and knows of no action or default on her part that would have caused the denial. It is noted that the address given by the applicant on motion is the same address that appeared on her applications for TPS and employment authorization, to which the request for additional evidence and the decision both were mailed. 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.

The record includes the applicant's Form I-589, Request for Asylum and Withholding of Deportation, filed with the Immigration and Naturalization Service, now CIS, on December 2, 1994. The record reflects that the applicant was interviewed, her asylum application was referred to an immigration judge, and she was placed in deportation proceedings on May 15, 1995. On November 14, 1996, the applicant's asylum claim was withdrawn and the Immigration Judge, Hartford, Connecticut, ordered that the applicant receive voluntary departure until February 12, 1997, with an alternate order of deportation to Honduras. The record contains a Warrant of Deportation issued at Hartford, Connecticut, on February 13, 1997, and indicates that the applicant failed to appear for scheduled departure to Honduras on March 24, 1997.

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.