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[REDACTED]

FILE: [REDACTED]
[EAC 99 188 50612]

Office: Vermont Service Center

Date: OCT 31 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:

[REDACTED]

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 for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 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 March 18, 1999. On September 22, 1999, on December 13, 1999, and on April 10, 2000, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record does not contain a response from the applicant for requests that were sent to the applicant's last known address; therefore, the director concluded that the applicant had abandoned his application and denied the application on July 26, 2000. 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 December 9, 2003. The applicant requested that his TPS application be reopened. The applicant also provided some additional documentation in support of his claim. It is noted that the applicant's response to the director's denial was received more than three years after the issuance of the director's decision.

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 case will be remanded and the director shall consider the applicant's response as a motion to reopen. It is also noted that the Vermont Service Center denied the initial TPS application, but that subsequently to the applicant's relocation to Florida, the appeal was filed with the Texas Service Center director.

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.