



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: Texas Service Center Date: **AUG 25 2006**
[SRC 99 236 50083]

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.

Cindy N. Gomez

Robert P. Wiemann, Chief
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 application on June 22, 1999. On April 8, 2000, the applicant was requested to submit additional evidence establishing that she entered the United States prior to December 30, 1998, and had continuously resided in the United States since that entry. The record did not contain a response from the applicant within the allotted time; therefore, the director concluded that the applicant had abandoned her application and denied the application on May 16, 2000. It is noted that the director sent the notice of denial to an incorrect address [REDACTED] Atlanta, Georgia, instead of her address [REDACTED] Atlanta, Georgia.

The applicant responded to the director's decision to deny her TPS application on April 22, 2003. The applicant stated that she never received the director's denial notice, even though she had maintained a correct address with the Service. In addition, she stated that she recently found out about the denial of her TPS application because her work permit extension was denied. The applicant further stated that she had responded to the director's April 8, 2000 request for evidence in a timely manner on May 2, 2000, and that she sent it along with a friend's materials. She submits a copy of the Express Mail receipt bearing a postmark of May 2, 2000, her name, and her friend's name (Ms. [REDACTED]).

A review of the record of proceedings reflects that the applicant appears to have responded to the director's request for evidence on June 26, 2002, over two years later, and that her response contained two affidavits dated June 24, 2002. The record also shows that the applicant had filed an application for an extension of her Employment Authorization on July 1, 2002, and it appears that her response to the director's April 8, 2000, request for evidence was submitted at that time.

In his decision to deny the TPS application, the director advised the applicant that the decision could not be appealed; 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 for further action.

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.