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U.S. Citizenship
and Immigration
Services

MI

FILE:

[EAC 01 264 52209]

OFFICE: VERMONT SERVICE CENTER

Date: **JAN 26 2006**

IN RE:

Applicant:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont 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 claims to be 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.

On June 7, 2002, the director denied the application after determining that the applicant had abandoned her application by failing to respond to a request for evidence. The director informed the applicant that there is no appeal from a denial due to abandonment, but that she could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On June 21, 2004, more than two years after the issuance date of the denial decision, the applicant filed an appeal from the denial decision.

On December 22, 2004, the director rejected the appeal because it was not timely filed, but accepted it as a motion to reopen. The director denied the application because the applicant had failed to establish her eligibility for late initial registration

The applicant filed an appeal on December 30, 2004. On appeal, the applicant requests that her case be reopened and reviewed.

There is no appeal from a denial due to abandonment. 8 C.F.R. § 103.2(b)(15).

A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. § 103.5(a)(6).

The director accepted the applicant's response to the director's latest decision as an appeal and forwarded the file to the AAO. However, in this case, the director denied the original application due to abandonment; since the original decision was not appealable to the AAO, the AAO has no jurisdiction to consider the current appeal from the director's subsequent denial of the application. Therefore, the case will be remanded and the director shall consider the applicant's response as a Motion to Reopen.

It is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's identity and nationality, her eligibility for late initial registration, her continuous residence in the United States since December 30, 1998, or her continuous physical presence in the United States since January 5, 1999.

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.