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**U.S. Citizenship
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FILE: [WAC 05 111 73594] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUL 03 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:


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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action.

The applicant is a native and citizen of Honduras who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the re-registration application because the applicant's prior Form I-821 had been denied, and he was no longer eligible to re-register for TPS.

The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on March 17, 1999, under CIS receipt number WAC 99 129 52408. The director denied that application on January 31, 2001, after determining that the applicant had abandoned his application by failing to respond to a request for additional evidence dated February 25, 2000; however, the applicant did respond to the request for additional evidence. **His response was received at the California Service Center on April 17, 2000.** The director erroneously advised the applicant that he could file an appeal with the AAO within 30 days of the date of the denial decision.

On March 9, 2001, the applicant responded to the denial decision. It is noted that the applicant's response was filed more than 33 days after the issuance date of the denial decision. The director accepted the applicant's response as an appeal and forwarded it to the AAO. As the director's decision was based on abandonment, the AAO has no jurisdiction over the matter. Therefore, the case must be remanded for consideration of the applicant's response as a motion to reopen.

The applicant filed the current re-registration application on January 19, 2005.

The director denied the re-registration application on April 20, 2005, because the applicant's initial TPS application had been denied and he was not eligible to re-register for TPS. However, because the applicant's motion to reopen the denial of his initial TPS application will be remanded, the denial of the re-registration application will be withdrawn and the case will be remanded pending a determination on the applicant's motion to reopen.

It is noted that the record of proceeding contains an outstanding warrant of removal issued by the District Director, Phoenix, Arizona, on September 28, 1998.

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 matter is remanded for further action consistent with the above and entry of a new decision.