U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

M1

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: MAR 27 2006
[LIN 02 233 51270]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center (NSC), and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

The applicant is stated 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. 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 her initial application [SRC 99 153 5499] on April 7, 1999, with the director of the Texas Service Center (TSC). On November 20, 2002, the TSC director denied that application due to abandonment because the record did not contain a response from the applicant to the director's April 7, 1999, Notice of Intent to Deny. It appears that director erred in stating that the applicant was issued a Notice of Intent to Deny on April 7, 1999. The record does not reflect that the TSC director issued a Notice of Intent to Deny the application. It is noted that the director's November 20, 2002 decision to deny was mailed in error to the applicant's previous address at [redacted] The applicant's correct address was [redacted] which she had indicated on her TPS re-registration [LIN 02 233 51270] filed on July 1, 2002. The applicant did not file a motion to reopen.

The applicant filed a subsequent application [LIN 02 233 51270] with the NSC director while her initial application [SRC 99 153 5499] was still pending with the TSC director. The director denied the instant application on January 13, 2003, because the applicant failed to submit any evidence to establish her eligibility for TPS late registration, her "date of entry prior to December 30, 1998," and a copy of her birth certificate or passport.

On February 10, 2003, counsel, on behalf of the applicant, filed a motion to reopen the director's decision. The director denied this motion on June 30, 2003, and stated that the applicant did not provide any evidence of eligibility for late registration, her date of entry prior to December 30, 1998, and her nationality. On August 1, 2003, counsel, on behalf of the applicant, filed a subsequent motion to reopen the director's decision. The director denied this motion on February 18, 2004, and stated that the applicant failed to establish her eligibility for late registration and her nationality.

On March 22, 2004, counsel submits an appeal now before the AAO. Counsel states on appeal that he is sending a brief and/or evidence to the AAU within 30 days. However, as of the date of this notice, the record is absent of any additional evidence in support of the applicant's claim of eligibility for TPS.

Therefore, the case will be remanded and the director shall consider the applicant's response in the issuance of a new decision.

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 entry of a new decision.