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**U.S. Citizenship  
and Immigration  
Services**

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APR 13 2007

FILE:

OFFICE: California Service Center

DATE:

[WAC 05 155 73753 –  
as it relates to EAC 99 144 50939]

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The initial application was denied by the Director, Vermont Service Center (VSC). The current application was denied by the Director, California Service Center (CSC), and is now on appeal before the Administrative Appeals Office (AAO). The initial application will be reopened, *sua sponte*, by the Chief, AAO, and the case will be remanded for further consideration and action.

The applicant is a 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 record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status [EAC 99 144 50939], on February 8, 1999. On August 1, 2000, the Director, VSC, denied the application on the ground of abandonment. After noting that the applicant was given 12 weeks to respond to a request for evidence, but that the notice was returned by the U.S. Postal Service as undeliverable, the director stated that:

You have failed to provide the Service with a current valid address, preventing any effort by the Service to obtain evidence to satisfy the requirements of your application. You have therefore effectively abandoned your application, and your application must now be denied per C.F.R. § 103.2(b)(13).<sup>1</sup>

After noting that a denial on the ground of abandonment cannot be appealed, the director advised the applicant that she could file a motion to reopen in accordance with 8 C.F.R. § 103.5. No such motion was filed by the applicant.

A review of the record indicates that the Vermont Service Center initially mailed its request for evidence to the address provided by the applicant on the Form I-821 – [REDACTED] Hyattsville, MD 20783 – but it was returned to the VSC stamped “attempted not known.” The VSC mailed a second request for evidence to the same address on January 20, 2000, which was again returned as undeliverable. On March 17, 2000, the VSC resent the request for evidence to a new address – [REDACTED] in Hyattsville – which was likewise returned with the postal stamp “No such number.” On July 3, 2000, the VSC received a letter from the applicant, dated June 30, 2000, asking the service center to update its records “with my new address,” which was identified as [REDACTED] in Hyattsville, MD.” Despite this letter from the applicant, the VSC sent its decision of August 1, 2000, denying the TPS application, to the incorrect address of [REDACTED] just like its last request for evidence sent on March 17, 2000.

The regulation at 8 C.F.R. § 244.9(c) – “*Failure to timely respond*” – provides as follows:

Failure to timely respond to a request for information . . . without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information . . . was not mailed to the applicant’s most recent address provided to the Service.

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<sup>1</sup> C.F.R. § 103.2(b)(13) provides, in pertinent part, as follows: “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.

The record clearly shows that the applicant sent her new address to the VSC prior to the issuance of its decision on the initial TPS application, and that the VSC had knowledge of it prior to issuing its final request for evidence, but mixed up the street number. Since the request for evidence in March 2000 "was not mailed to the applicant's most recent address provided to the Service," as required by 8 C.F.R. § 244.9(c), the VSC's denial of the application on the ground of abandonment was improper.

In the meantime, the applicant filed a new TPS application [WAC 05 155 73753] with the California Service Center on March 4, 2005. Noting that the applicant had a previously denied Form I-821, the Director, CSC, treated the subsequent Form I-821 as a re-registration application and denied it on the ground that the applicant had not established *prima facie* eligibility under section 244 of the Act.

The director's denial of the initial application will be withdrawn; the application will be remanded for a new decision. The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Salvadorans.

As always in these proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.