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FILE: [REDACTED] Office: California Service Center Date: **AUG 20 2007**  
[WAC 05 096 82218  
as it relates to SRC 99 164 50734]

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the office California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's temporary protected status was denied by the Director, Texas Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, 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 TPS application on May 5, 1999, under Citizenship and Immigration Services (CIS) receipt number SRC 99 164 50734. The Director, Texas Service Center, denied that application for abandonment, on November 28, 2003, because the applicant failed to respond, within 30 days to a November 7, 2003 notice of intent to deny requesting that he submit evidence of his continuous residence since December 30, 1998, his continuous physical presence in the United States since January 5, 1999, and his identity. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 3, 2005, under CIS receipt number WAC 05 096 82218, and indicated that he was re-registering for TPS. The Director, California Service Center, denied this application on April 11, 2006, because the applicant's initial TPS application had been denied.

The AAO notes that although the notice of intent to deny, dated November 7, 2003, instructed the applicant to submit the requested evidence within 30 days, as noted above, the director's denial decision was issued on November 28, 2003. The record of proceeding does not indicate that the director's denial notice was returned as undeliverable. The applicant had until December 7, 2003 to respond to the director's request. While the record of proceedings as presently constituted does not contain sufficient evidence to establish the applicant's requisite continuous residence and continuous physical presence in the United States, the director's decision to deny TPS was rendered before the time allotted to the applicant to respond to the notice of intent to deny expired.

The director's denial of the initial application will be withdrawn; the application will be remanded, and the director shall re-issue the request for evidence to afford the applicant an opportunity to submit the evidence to establish his eligibility for TPS. 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 Hondurans.

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 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.