



U.S. Citizenship
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Services

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FILE: [WAC 05 078 72204] Office: California Service Center Date: **JAN 31 2007**

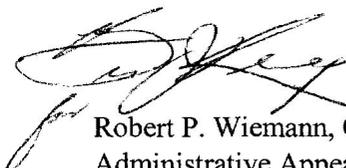
IN RE: Applicant: 

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 on appeal. The case will be remanded for further consideration and action.

The applicant is stated to be 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 17, 1999, under CIS receipt number SRC 99 172 54709. The Texas Service Center director denied the application, on August 29, 2002, because the applicant failed to respond, within 12 weeks, to a January 29, 2002, request for evidence to establish continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The director considered the application abandoned. 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 December 17, 2004, under CIS receipt number WAC 05 078 72204, and indicated that she was re-registering for TPS. The California Service Center director denied that application on July 23, 2005, because the applicant's initial TPS application had been denied for abandonment.

It is noted that the record reveals that the denial decision, mailed to the applicant at the address, in Miami, listed on her initial TPS application, was returned as undeliverable. The record also reveals, however, that CIS mailed a Notice of Action to the applicant to a different address in Amityville, New York, on November 20, 2000, and that the applicant submitted a Change of Address Form, signed on December 1, 2000, indicating that her address was changed to West Babylon, New York. Yet, on August 29, 2002 the director mailed the denial decision to the applicant's address as listed on the initial TPS application. It appears that through no fault of hers, the applicant did not receive either the director's request for evidence, or the denial letter, dated August 29, 2002.

Therefore, the case will be remanded and the director shall reissue the request for evidence.

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.