



U.S. Citizenship  
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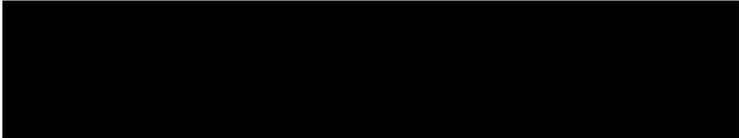
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FILE:   
[SRC 02 135 54702]

Office: TEXAS SERVICE CENTER Date: **MAR 02 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.

*Cindy M. Somers*  
for  
Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant claims 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 her application by failing to respond to a request for evidence.

If all requested 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 TPS application on July 3, 2000. On August 4, 2003, the applicant was requested to submit additional evidence establishing her identity and her qualifying residence in the United States. The director concluded that the applicant had abandoned her application and issued a Notice of Denial on November 7, 2003. It is noted that a response was received from the applicant on November 17, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen.

In compliance with the director's instructions, the applicant submitted a motion to reopen her case. According to counsel for the applicant, the applicant entered the United States on July 6, 1998, and is a qualified TPS applicant. However, although counsel states that evidence of the applicant's nationality and identity was submitted, including the applicant's Honduran passport, evidence of her nationality and identity is not included in the record.

The director accepted the motion as an appeal and forwarded the file to AAO in error. However, the applicant has, in fact, submitted a motion to reopen that must be addressed by the director.

It is noted that the applicant was ordered removed from the United States in absentia, on June 29, 1999, at Atlanta, Georgia, and a Form I-205, Warrant of Removal /Deportation was issued on July 27, 1999.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction on this case, and it may not be appealed to the AAO. Therefore, the case will be remanded and the director shall consider the motion.

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.