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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: California Service Center Date: **MAY 29 2007**  
[WAC 06 141 50573. motion]  
[WAC 05 102 70269]  
[WAC 99 122 54081]

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:



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. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on motion. 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 TPS application, February 19, 1999, under CIS receipt number WAC 99 122 54081. The director denied that application on May 9, 2001, after determining that the applicant had abandoned his application by failing to respond to a request for additional evidence dated August 26, 2000. 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 indicate that the applicant filed a motion within the requisite period.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on January 10, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application, on June 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

A subsequent appeal from the director's decision was dismissed on February 27, 2006, after the Director of the AAO also concluded that the applicant had failed to establish that he was eligible to re-register for TPS. On motion to reopen, counsel reasserts the applicant's eligibility for TPS.

The motion is considered late; however, under the circumstances, the AAO will re-open the case. It is noted that the AAO director's dismissal is dated February 27, 2006. Any motion to reopen/reconsider must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before April 3, 2006. The applicant's attorney initially submitted the Form 290-B on April 3, 2006; however, the motion was not accompanied by the proper filing fee. Upon receipt, the California Service Center returned the motion and accompanying documents and check, to the applicant's attorney, on April 4, 2006, with instructions to mail the appeal to the California Service Center with the proper fee. The motion was received at the California Service Center on April 27, 2006.

The AAO notes that the record contains a request for evidence, dated August 26, 2000, which was mailed to the same address as the director's denial notice, dated May 9, 2001; however, the address on the denial notice was not the applicant's address of record as of the date of mailing (as evidenced by a CIS printout, dated October 10, 1999). As the record of proceeding indicates that the director's request for evidence was returned as undeliverable, there is an inference that the applicant also did not receive the denial notice. Without evidence that the applicant received these notices, there is no basis to determine whether the applicant failed to comply with the director's instructions in the notice of intent to deny, as well as the appeal instructions.

It is noted that the record of proceedings reflects that the applicant submitted a photocopy of his Honduran passport, including the biographic page, which establishes the applicant's nationality and identity; however, the record of proceedings does not contain sufficient evidence of the requisite continuous physical presence from January 5, 1999, to the date of filing the TPS application on February 19, 1999.

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 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.