



U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER
[SRC 02 188 54126]
[SRC 03 101 51014, *motion*]

Date: **AUG 08 2008**

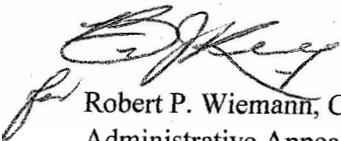
IN RE: Applicant: [REDACTED]

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


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. An appeal that should have been treated as a motion was forwarded to the Administrative Appeals Office (AAO) in error and was rejected by the Director, Administrative Appeals Office (AAO). A subsequent motion was filed and forwarded to the AAO. The motion will be remanded to the director for appropriate action.

The applicant claims to be a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under 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 his 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 his application on May 30, 2002 under receipt number SRC 02 188 54126. On June 18, 2002, the applicant was requested to submit additional evidence establishing his eligibility to file for late initial registration, evidence of his qualifying continuous residence and continuous physical presence in the United States, evidence of his nationality, and a copy of his birth certificate with English translation. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on July 25, 2002. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen.

The applicant filed a motion that was treated as an appeal and erroneously sent to the AAO. On January 28, 2003, the AAO rejected the applicant's motion, since the denial was due to abandonment.

The applicant filed this second motion, submitting the same evidence of continuous residence, but failed to submit evidence of his eligibility for late registration, or of his nationality or identity. The director accepted this as an appeal and forwarded the case to the AO. However, as the director's decision was based on abandonment, the AAO has no jurisdiction in this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

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.