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U.S. Citizenship and Immigration Services

PUBLIC C

[redacted]

APR 20 2004

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

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 that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Director
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 will be remanded to the director for further consideration and action.

The applicant is a native and citizen of Honduras who indicated on his application that he entered the United States on July 26, 1998. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

If all requested initial evidence and requested additional 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 initial application for TPS on July 5, 2002. On January 23, 2003, the applicant was requested to submit additional evidence establishing his qualifying residence and physical presence in the United States. The director concluded that the applicant had abandoned his application and issued a Notice of Denial on March 31, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days. The applicant responded on May 6, 2003. He requested that his TPS application be reopened, and stated that he had paid a Notary Public to prepare and submit the application for him. He stated that he had expected that the notary would provide him with a copy of his TPS application, but he did not do so. The applicant submitted evidence of his residence in the United States.

The director accepted the motion as an appeal and forwarded the file to the 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 did, in fact, respond to the Notice of Intent to Deny on March 4, 2003. The applicant submitted an affidavit from his landlord, copies of the biographic pages from his Honduran passport; and a personal statement explaining that he did not have any additional evidence to submit.

As the director's decision was based on lack of prosecution, the AAO has no jurisdiction in 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 to the director for further action consistent with the above and entry of a new decision.