U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 22 2004

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 for further consideration and action.

The applicant is 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 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 TPS application on July 3, 2002. On January 17, 2003, in a Notice of Intent to Deny, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The record contains a postmarked envelope indicating that this Notice of Intent to Deny was returned to Citizenship and Immigration Services (CIS) on February 6, 2003, marked as undeliverable. CIS records reflect that additional attempts to mail the notice to the applicant were also returned as undeliverable. The record does not contain a response from the applicant to the request; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Decision to Deny on April 10, 2003. The director noted that the Notice of Intent to Deny had been mailed to the applicant's last known address, and was returned as undeliverable. The director advised the applicant that denial due to abandonment could not be appealed, but that the applicant could file a motion to reopen pursuant to the regulations at 8 C.F.R. § 103.5.

The applicant responded to the director's Notice of Decision on October 3, 2003. The applicant requests that his case not be closed or denied. He states that he would like to be given "the opportunity to be legal in this country in which with a lot of difficulty [he has] lived here without having the opportunity of being employed and also given the chance to pay [his] taxes." The applicant also asserts that he has "answered all the evidences and documents you asked me for [sic]." The applicant does not submit additional evidence in support of his claim. In a subsequent affidavit dated October 21, 2003, the applicant states that he would like his case to be re-opened, and asserts that he has "always answered all the notifications and letters you have sent me on time and have continued the procedure necessary for my case." **It is noted that the applicant's response to the Notice of Decision was received almost six months after the issuance of the director's decision.**

It also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence and continuous physical presence during the requisite time periods. The record includes a photocopy of the applicant's Honduran identification card, indicating that it was issued in Honduras on March 6, 2000. The applicant did not explain how he obtained that document after his stated date of entry into the United States. The applicant also submitted six Tele-Giros America Inc., Miami, Florida, money transfer receipts, one of which bears an altered date. This evidence alone is insufficient to establish continuous residence and continuous physical presence in the United States.

The director accepted the applicant's response as an appeal and forwarded the file to the AAO. However, as the director's decision was based on abandonment, the AAO has no jurisdiction over 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.