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 N. 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 The director's decision will be withdrawn and the application will be remanded for further consideration and action.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 her 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 regulation at 8 C.F.R. § 244.9(4)(c) states, in pertinent part:

> *Failure to timely respond.* Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

The record reveals that the applicant filed her initial application on April 15, 2002. On October 23, 2002, the applicant was requested to submit additional evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the applicant was requested to submit evidence establishing her nationality, photo identification or a national identity document bearing a photograph and/or fingerprint, and an original birth certificate with English translation. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Decision to Deny and Revoke on January 9, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen pursuant to 8 C.F.R. § 103.5.

The applicant responded to the Notice of Decision to Deny and Revoke on October 1, 2003, almost nine months after the director's decision. The applicant states that she has lived in the United States since 1998, and asks for an opportunity to be legally in the United States and to have a better job and a better life. The applicant submits a notarized letter dated August 16, 2003, from the applicant to CIS, in which she states that she does not have a copy of the Form I-821 to submit as requested. In this letter the applicant indicates her address remains at [redacted] Pompano Beach, Florida." It is noted that the applicant provided the Pompano Beach, Florida, address on the Form I-821 she signed on June 29, 2002, and submitted as an application for re-registration. It is further noted that both the Notice of Intent to Deny and the Notice of Decision denying the application were mailed to the applicant's former address as of April 2002, at [redacted] Gatlinburg, Tennessee. The record reflects that the Notice of Intent to Deny and the Notice of Decision were not mailed to the applicant's most recent address provided to CIS.

Therefore, the director's decision will be withdrawn and the application will be remanded for further consideration and action. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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.