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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[SRC 03 161 52846]

Office: TEXAS SERVICE CENTER Date: JAN 18 2005

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.

Robert P. Wiemann
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 on appeal. The case will be remanded for further consideration and action.

The applicant is a native and citizen of Honduras who is applying for 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 record reveals that the applicant filed her application on July 15, 2003. On October 14, 2003, the applicant was requested to submit 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 photo identification or a national identity document bearing a photograph and/or fingerprint, and a photocopy of her birth certificate with English translation. The record did not contain a timely response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Decision to Deny on November 20, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen pursuant to the regulations at 8 C.F.R. § 103.5.

In a subsequent letter to the applicant, dated December 10, 2003, and sent in response to the applicant's inquiry, the director informed the applicant that her response to the Notice of Intent to Deny, containing a national identity document, a birth certificate translation, and documentation relating to her residence and physical presence in the United States, had been received on November 21, 2003, one day after the denial of the application. This letter further informed the applicant that the response she had submitted did not contain all of the requested information, and stated that she had failed to establish that she was eligible for late registration. In this letter, the director further advised the applicant that she had the right to appeal the denial of her case.

The applicant responded to the director's decision on December 24, 2003; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. It is noted that the director's response to the applicant's inquiry conflicts with the director's decision, in that the director's response informed the applicant that she could appeal the denial of her TPS case, while the director's decision correctly informed the applicant that she could not appeal the decision. 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.

It also is noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence or continuous physical presence during the requisite time periods.

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.