

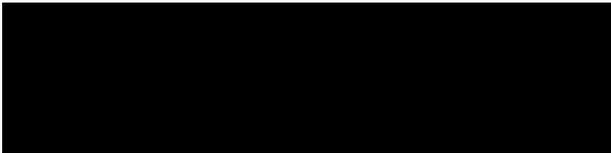
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FILE: [REDACTED]
[SRC 03 110 54383]

Office: TEXAS SERVICE CENTER Date: JUL 05 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.

Cindy N. Gomez 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 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 March 10, 2003. On April 25, 2003, and again on September 4, 2003, 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); continuous residence in the United States since December 30, 1998; and, continuous physical presence in the United States since January 9, 1999. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on January 20, 2004.

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 timely responded to the director's decision. It is noted that on the Form I-290B, Notice of Appeal, the applicant checked all of the boxes, indicating that he: was not submitting additional evidence; was submitting evidence with the appeal form; would be submitting additional evidence or a brief within 30 days; and, that he needed additional time to submit evidence or a brief. To date, additional evidence has not been received into the record. On motion, the applicant states that he has sent all the evidence that he had, and that he moved but had failed to note his change of address earlier. He asks that his case be reopened.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. 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.