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U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 02 103 52640]

OFFICE: VERMONT SERVICE CENTER

Date: **JAN 26 2006**

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The director subsequently dismissed a motion to reopen the case. The case is now before the Administrative Appeals Office (AAO) on appeal and will be remanded for further consideration and action.

The applicant is a 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.

On September 3, 2002, the director denied the application after determining that the applicant had abandoned her application by failing to respond to a request for evidence. The director informed the applicant that there is no appeal from a denial due to abandonment, but that she could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On July 21, 2003, the applicant filed a motion to reopen the case.

On May 12, 2004, the director reopened the proceedings and reaffirmed his decision to deny the application because the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director also determined that the applicant had failed to establish her eligibility for late registration.

The applicant filed an appeal on June 9, 2004.

There is no appeal from a denial due to abandonment. 8 C.F.R. § 103.2(b)(15).

A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. § 103.5(a)(6).

The director accepted the applicant's response to the director's latest decision as an appeal and forwarded the file to the AAO. However, in this case, the director denied the application due to abandonment. Since the decision was not appealable to the AAO, the AAO has no jurisdiction to consider the current appeal from the director's decision to reaffirm his decision to deny the subsequent Motion to Reopen. 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.