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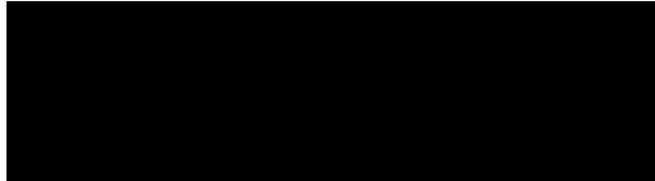
**U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529**



**U.S. Citizenship
and Immigration
Services**

PUBLIC RECORD

M.



FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER Date: **FEB 21 2008**
[EAC 07 185 70048]

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 Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 claims to be 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.

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 may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The applicant filed this application on April 2, 2007, and indicated that she was filing for late registration. On June 28, 2007, the applicant was advised of inconsistencies between the documentation submitted with her initial and current application. Specifically, at the time she filed her initial application, the applicant submitted a marriage certificate indicating her marriage occurred on February 27, 2001. However, the photocopied marriage certificate submitted with the current application indicates her marriage occurred on March 23, 1993, with an issuing date of February 15, 1982. The applicant was requested to submit the original March 23, 1993, marriage certificate, and provide evidence that the initial marriage certificate was not fraudulent. The applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, however, did not submit a response to the notice prior to the issuance of the director's decision.

The director concluded that the applicant had abandoned her application and denied the application on August 15, 2007. 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 filed a timely motion to reopen on September 10, 2007, and stated that she is eligible for the benefit being sought as she is a spouse of an alien currently eligible to be a TPS registrant. The applicant also provided additional documentation in support of her claim.

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