U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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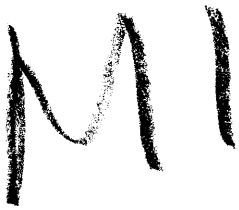

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 1 2 2005
[WAC 04 018 50699]

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 M. Simcox

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter 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 application on October 9, 2003. On December 9, 2003, the applicant was requested to submit evidence to establish his eligibility for late initial registration and additional evidence of continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The notice was mailed to the applicant at his address of record, but the record does not contain a response from the applicant. Therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on April 7, 2004. The director stated in the Notice of Decision that the applicant could file an appeal with the AAO within 33 days of the issuance of the Notice of Decision.

The applicant responded to the Notice of Decision on May 17, 2004. The applicant stated that he never received the Notice of Intent to Deny and indicated that he would submit additional evidence within 30 days. To date, no such evidence has been received.

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 matter will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the record, as it is presently constituted, does not contain sufficient evidence to establish the applicant's eligibility for late initial registration. Nor does it contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time frames. The applicant has not submitted any evidence to establish his residence and continuous physical presence in the United States prior to December 2000. Further, the applicant indicates on his TPS application that he is single, but the applicant's photocopied ADP pay statements from Western Insulation in Hayward, California, indicate that the applicant is married and claiming five exemptions for federal income tax purposes. The applicant has not provided any explanation for these discrepancies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the applicant to resolve any

inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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 matter is remanded for further action consistent with the above and entry of a new decision.