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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

FEB 07 2005

IN RE:

Applicant:

[REDACTED]

a.k.a.

[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. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 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 initial TPS application on July 3, 2001, while residing in Indiana. On September 6, 2001, the applicant was requested to submit additional 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 date of entry into the United States and her qualifying continuous residence in the United States during the requisite period. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and denied the application on February 27, 2002.

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 responded to the director's decision on July 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. 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 is noted that the applicant's request to reopen her case was received 17 months after the issuance of the director's decision. It is further noted that the applicant's change of address to Miami, Florida, was not received by Citizenship and Immigration Services until 2003.

It is noted that some of the evidence submitted by the applicant appears to have been altered. The Cook County Hospital, Chicago, Illinois, Emergency Services receipt indicates the time of service, but the line for the date of service is blank. The applicant also submitted documentation that conflicts with other submitted evidence. The "Employee Parameter Printout" of Kopetsky's Car Wash, at an unspecified location, indicates that the applicant was terminated from employment there on February 22, 2001. On motion, however, the applicant submits additional pay stubs from Kopetsky's Car Wash, one of which indicates that she worked there for the period ending September 16, 2001. Further, on motion, the applicant submits ADP pay stubs from Fazoli's Italian Food, Lexington, Kentucky, indicating that the applicant worked there simultaneously with her work at Kopetsky's Car Wash in September 2001.

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.