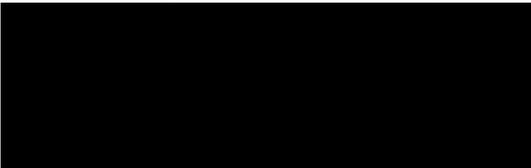




U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

M



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **JAN 26 2005**
[SRC 02 210 54421]

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:

PUBLIC COPY

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 fo
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. An appeal was sent to the Administrative Appeals Office (AAO) and was rejected on April 8, 2003. A motion to reopen is now before the AAO. As the original appeal was correctly rejected as an appeal filed where the AAO has no jurisdiction, this motion must be dismissed.

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 TPS application on June 25, 2002. On July 11, 2002, the applicant was requested to submit additional evidence establishing her nationality, qualifying continuous residence, and continuous physical presence in the United States during the requisite periods. The applicant was also asked to submit evidence establishing her eligibility for late registration. In addition, the applicant was requested to submit a national identity document bearing a photograph and/or fingerprint, and an original birth certificate with English translation. The record does not contain a timely response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Decision denial on August 30, 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 Notice of Decision on November 18, 2002; **it is noted that the applicant's response to the Notice of Decision was received almost five months after the issuance of the director's decision.** The applicant requested that her TPS application be reopened and stated that she has been living in the United States since 1998, and that she was submitting additional evidence to prove her residence and physical presence during the year 1999. The applicant also provided additional documentation in support of her claim, and submitted the cover sheet included with the notice of intent to deny.

The director 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 had no jurisdiction over this case. The Director, AAO, issued a decision on April 8, 2003, rejecting the appeal because the director's denial was made on the basis of abandonment. The Director, AAO, noted that if the applicant had additional evidence for the record, she could file a motion to reopen with the office which rendered the initial decision, and determined that since there was no appeal of the decision in the present matter, the appeal was rejected.

The applicant filed the instant motion to reopen in a timely response to the decision of the Director, AAO. On motion, the applicant states that she has been living in the United States since 1998, and states that she did not

apply earlier because of lack of employment, fear of not getting an extension, and fear of being deported. The applicant also submits additional evidence on motion.

As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the motion must be dismissed.

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 motion is dismissed.