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U.S. Citizenship
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FILE: [REDACTED]
[WAC 99 128 51053]

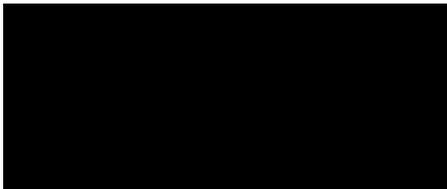
Office: Texas Service Center

Date: **NOV 03 2005**

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:



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, Texas 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 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 application on March 4, 1999. On April 8, 2000, the applicant was requested to submit evidence of establishing her residence in the United States. The director determined that the applicant did not respond to his April 8, 2000 request and denied the application on September 28, 2000, due to abandonment.

On June 27, 2003, the applicant was again requested to submit evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was also requested to submit evidence to establish her eligibility for late TPS registration. On August 5, 2003, the applicant submitted some documentation in an attempt to establish her eligibility for TPS. The director denied her application on August 22, 2003, because the applicant failed to establish her eligibility for TPS late registration.

A review of the record of proceedings and CIS' systems reflects that the applicant filed the instant application on March 4, 1999, during the initial registration period. As such, it appears the director erred in her conclusion that the instant application was filed on August 31, 2001, as noted in her decision to deny the application dated August 22, 2003. Furthermore, the application was previously denied for abandonment, and it is not clear from the record whether the director reopened the proceedings after the denial for abandonment. Therefore, the case will be remanded and for an entry of a new decision consistent with the above.

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.