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U.S. Citizenship
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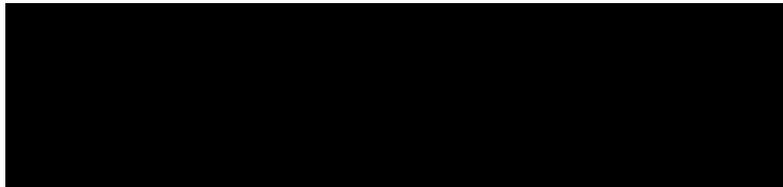
[SRC 03 173 55728]

Office: TEXAS SERVICE CENTER

Date: OCT 31 2005

IN RE:

Applicant:



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, 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 is a native and citizen of Honduras who is applying for 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 submit requested documents.

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 June 4, 2003. On September 29, 2003, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and permanent presence in the United States. He was also requested to submit evidence to establish that he was eligible for late registration. The record does not contain a response from the applicant. On January 30, 2004 the director sent the applicant a Notice of Intent to Deny (NOID) informing him that his FBI background check based upon his fingerprint submission showed that he had been arrested. The director requested that he submit court dispositions for all past arrests and other evidence concerning any criminal history. The applicant responded by submitting a letter dated March 22, 2004 which enclosed a certified document from the Clerk of the Court in Broward County, Florida dated March 19, 2004 relating to two charges stemming from his arrest on May 12, 2003.

On March 31, 2004, the director sent the applicant another NOID requesting that he submit evidence that the applicant qualified for late initial registration. The applicant did not respond to that request. The director then concluded that the applicant had abandoned his application and denied it on April 29, 2004. The director advised the applicant that, while the decision could not be appealed, he could file a motion to reopen within 30 days.

The applicant responded to the director's decision on May 12, 2004. The applicant requested that his TPS application be reopened and stated that he has been living in this country since 1998. The applicant asked that he be provided the opportunity to be legal in this country, to have a better life and to obtain his employment authorization card.

The director erroneously accepted the applicant's May 12, 2004 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 does not have jurisdiction over this case. Therefore, it will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that although the applicant states that he has been in the United States since 1997, that his Honduran national identity document was issued to him in Honduras on November 18, 2001, thus precluding a favorable finding regarding his continuous physical presence and continuous residence.

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.