



U.S. Citizenship  
and Immigration  
Services

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PROBATION  
identifying data related to  
proceedings and the  
issuance of personal papers

[REDACTED]

FILE: [REDACTED]  
[SRC 01 255 55191]

Office: TEXAS SERVICE CENTER Date: SEP 02 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: 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.

*Robert P. Wiemann for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, due to abandonment on July 24, 2002. The applicant filed two motions to reopen that were dismissed by the service center director on July 11, 2003, because the applicant failed to submit evidence of his eligibility for late registration. On August 20, 2003, the applicant subsequently filed an appeal to the service center director's decision of July 11, 2003. The appeal is now before the Administrative Appeals Office (AAO). 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 initial TPS application on August 6, 2001. On January 16, 2002, and again on June 14, 2002, the applicant was requested to submit additional evidence establishing his 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 his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on July 24, 2002.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen. On September 6, 2002, and again on December 10, 2002, the applicant responded to the director's decision. The applicant stated that he did not abandon his application, and was not aware of any requirements that he failed to fulfill. In support of the motion, the applicant submitted additional evidence relating to his continuous residence and continuous physical presence in the United States, consisting of: an affidavit from an acquaintance attesting to the applicant's presence in the United States; a letter from the Human Resources Manager of "Beck," of unspecified location; a Miami Go Wireless, Inc. receipt dated "12-1-98;" a generic rent receipt dated November 3, 1998; and, CIS receipt notices.

On July 11, 2003, the director dismissed the motion because it did not meet the requirements of a motion to reopen as set forth in 8 C.F.R. § 103.5(a)(4). The service center director's decision stated that the applicant had failed to submit evidence of his eligibility for late registration. Therefore, the director concluded that the request did not meet the requirements of a motion to reopen, denied the motion, and found that the applicant had again failed to establish eligibility for TPS.

Following the service center director's decision dated July 11, 2003, the applicant filed an appeal that was received by the Texas Service Center on August 20, 2003.

On appeal, the applicant states that he has been living in the United States since 1997. He asks that his case be reopened and that he be given "the opportunity to continue being legal in this country in which with a lot of difficulty [he has] lived here having the opportunity of being employed and also given the chance to pay [his]

taxes.” In support of the appeal, the applicant submits: generic rent receipts dated in 1999; an affidavit dated August 13, 2003, from [REDACTED] stating that the applicant rented a room between July and October 1999; two Western Union receipts dated in 1999; a Washington Mutual invoice with payment due by July 21, 1999; four Sprint bills dated in 1999; United States Postal Service mail receipts dated June 10, 2003, and June 17, 2003; and, a letter from the applicant dated August 8, 2003, stating that a letter had been mailed to his previous address, after he had made an address change.

There is no appeal from a denial due to abandonment. 8 C.F.R. 103.2(b)(15).

A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. 103.5(a)(6).

In this case, the director denied the original application due to abandonment. Since the original decision was not appealable to the AAO, the AAO has no jurisdiction to consider the current appeal from the director’s denial of the subsequent Motion to Reopen. Therefore, the appeal must be remanded to the director for further consideration and action.

In addition, the applicant also has failed to submit sufficient credible evidence of his continuous residence and continuous physical presence in the United States during the requisite periods. Some of the documentation appears to have been altered. 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 application. It is incumbent upon 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 (BIA 1988).

It is also noted that the Federal Bureau of Investigation (FBI) fingerprint results report pertaining to the applicant’s fingerprints reflects that the applicant was apprehended on or about January 5, 2005, and charged with entering the United States without inspection. This would further preclude a favorable finding of his continuous physical presence and continuous residence in the United States during the requisite periods.

The FBI report also reflects that the applicant was arrested on August 6, 2004, by the Miami, Florida, Police Department, and charged with TRAFFIC OFFENSE – DRIVING UNDER THE INFLUENCE, STATUTE/ORDINANCE- FL316.193. The record does not contain the final court disposition(s) for the charge(s) against the applicant. This issue must be addressed in any future proceedings.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

**ORDER:** The case is remanded to the director for further action consistent with the above.