



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[SRC 99 157 50099]

OFFICE: Vermont Service Center

Date: JUL 23 2008

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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The director subsequently dismissed a motion to reopen the case. The case is now before the Administrative Appeals Office (AAO) on appeal and 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.

On January 10, 2005, the director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence. The director informed the applicant that there is no appeal from a denial due to abandonment, but that he could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On January 28, 2005, the applicant filed a motion to reopen the case. The applicant stated she was eligible because her misdemeanor convictions arose from the same set of circumstances, and that she satisfied the qualifying residence and presence requirements.

The applicant appealed the denial to the AAO, which remanded the case to the director for lack of jurisdiction. The director re-opened the case and denied the application because the applicant was not eligible due to two misdemeanor convictions, could not establish a qualifying residence and presence, and was not eligible to file a late registration.

The applicant filed an appeal on October 31, 2007. On appeal, the applicant asserts she is eligible for TPS.

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).

The director accepted the applicant's response to the director's latest decision as an appeal and forwarded the file to the AAO. However, 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 subsequent to the Motion to Reopen. Therefore, the case will be remanded to the director, who may consider the applicant's response as a Motion to Reopen if it satisfies the criteria for a motion.

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.