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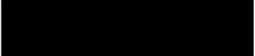
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

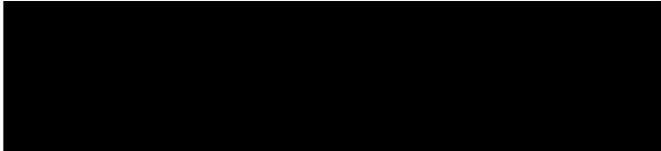


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FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 29 2007
[WAC 99 187 52995]
[WAC 05 097 79932]

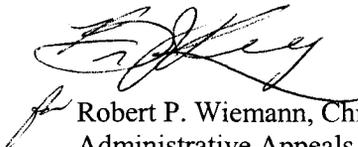
IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:


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, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the application will be approved.

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 applicant filed a TPS application during the initial registration period on June 23, 1999, under receipt number WAC 99 187 52995. The director denied that application on November 28, 2000, after determining that the applicant had abandoned her application based on her failure to respond to requests dated April 21, 2000 and July 21, 2000, to submit final court dispositions of her arrests on March 10, 1992 and on September 6, 1996.

The applicant subsequently filed a Form I-765, Application for Employment Authorization, seeking renewal of her temporary treatment benefits on July 29, 2002, under receipt number WAC 02 244 53407. In a notice of intent to deny (NOID) dated November 27, 2002, the applicant was requested to submit evidence to establish that she was eligible for renewal of her temporary treatment benefits, that she had been approved TPS benefits, and that she had received prior extensions of TPS. Counsel responded to the NOID on December 24, 2002, he submitted the final court dispositions of the applicant's arrests, and he requested that the response be considered as a motion to reopen the initial TPS application.¹

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 5, 2005 [WAC 05 097 79932], and indicated that she was re-registering for TPS. The director denied the re-registration application on April 20, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that in April 2000 she received a notice requesting certified court dispositions of her arrests, and that she did respond to the request and submitted the requested court documents; however, she never received any notice that her initial TPS application had been denied. She resubmits copies of court dispositions of her arrests that were previously furnished and contained in the record of proceeding:

1. On March 25, 1992, in the Municipal Court of Pasadena Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date March 10, 1992), the applicant was indicted for Count 1, theft of property in violation of § 484(a) PC, a misdemeanor; and Count 2, false representation of identity to a peace officer in violation of § 148.9(a) PC, a misdemeanor. On December 31, 1998, the case was dismissed in furtherance of justice pursuant to § 1385 PC.
2. The Federal Bureau of Investigation fingerprint results report indicates that on September 6, 1996, the applicant was arrested in Los Angeles, California, for assault with a deadly weapon other than a firearm with great bodily injury. On September 10, 1996, in the Municipal Court of L.A.- Criminal Judicial District, County of Los Angeles, California, Case No. [REDACTED] the applicant was indicted for battery in violation of § 242 PC, a misdemeanor. On October 28, 1996, the court declared a mistrial because the jury was "hopelessly deadlocked," and the case was dismissed pursuant to § 1385 PC.

¹ It is noted that the motion was accepted at the California Service Center, the applicant's filing fee for the motion was processed, and the motion was assigned a receipt number, WAC 03 107 54875. There is no evidence in the record that a decision was ever issued on the motion.

The record, in this case, shows that the applicant's charges, detailed in Nos. 1 and 2 above, were dismissed by the court. The applicant, therefore, has overcome the basis for the denial of the initial TPS application. Moreover, the record of proceeding contains sufficient evidence to establish the applicant's eligibility for TPS and also does not reflect any grounds that would bar the applicant from receiving TPS. Therefore, the director's decision to deny the applicant's initial TPS application will be withdrawn and the application will be approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has met that burden.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration applications are both approved.