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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE # [REDACTED]

Office: California Service Center

Date: MAY 10 2001

IN RE: Applicant: [REDACTED]

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

IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant is a native and citizen of Honduras who indicated on his application that he entered the United States in May 1986. On December 19, 1999, the director granted the applicant until March 19, 2000, to submit certain information and indicated that failure to respond would result in the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, being considered abandoned and it would be denied pursuant to 8 C.F.R. 103.2(b)(13).

On January 10, 2000, the applicant submitted a form from the Los Angeles Police Department indicating that his request for Criminal Offender Record Information was not properly made. The director then denied the application accordingly.

The record reflects that the applicant was convicted of the offense of being under the influence of alcohol on August 14, 1997. All other charges were dismissed.

On appeal, counsel states that the applicant went to the Los Angeles Police Department on January 4, 2000, and he was told that the court disposition would be mailed to the Service but Department regulations prevented the applicant from receiving his own copy. Counsel provides evidence that the applicant's conviction record had been mailed to the Service pursuant to his January request and the Police Department mailed a second copy of that document to the Service per the applicant's request. The record now contains two copies of that record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244.2, provide that an applicant who is a national of Honduras is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national of a state designated under § 244(b) of the Act;
- (b) Has been continuously physically present in the United States since January 5, 1999;
- (c) Has continuously resided in the United States since December 30, 1998;
- (d) Is admissible as an immigrant under § 244.3;
- (e) Is not ineligible under 8 C.F.R. 244.4; and
- (f) (1) Registers for TPS during the initial registration period, or

(2) During any subsequent extension of such designation:

(i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

(ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Service. 8 C.F.R. 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. 244.9(b).

The documentation in the record now establishes that the applicant has been convicted of only one misdemeanor, and he has satisfied all other regulations.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of § 244 of the Act. The applicant has met this burden. Consequently, the director's decision to deny the application for temporary protected status will be withdrawn, and the application will be approved.

**ORDER:** The appeal is sustained. The director's decision is withdrawn, and the application is approved.