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U.S. Department of Homeland Security  
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536



File:

Office: Vermont Service Center

Date: **DEC 19 2003**

IN RE: Applicant:

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

IN BEHALF OF APPLICANT:



**INSTRUCTIONS:**

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

The applicant is a native and citizen of Honduras who indicated on her application that she entered the United States without a lawful admission or parole on January 18, 1986. The director approved the application for Temporary Protected Status (TPS) on June 20, 2000. The director subsequently withdrew the applicant's Temporary Protected Status on December 20, 2002, when it was determined that the applicant had failed to submit her required annual re-registration.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension (effective on July 5, 2003) valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

An alien who has been granted Temporary Protected Status must register annually with the district office or service center having jurisdiction over the alien's place of residence 8 C.F.R. § 244.17(a).

The record reveals that on June 20, 2000, the director granted the application for Temporary Protected Status. However, the record does not reflect an attempt by the applicant to file her required annual re-registration in 2001.

On November 4, 2002, the director notified the applicant that her Temporary Protected Status would be "withdrawn unless you can submit additional evidence to show that you had registered on time or that you had a good reason for not registering."

In response, counsel explained that the applicant had received Employment Authorization Cards in conjunction with a separate application for benefits and mistakenly believed that the issuance of these documents relieved her from filing annual re-registrations for TPS. In support of this assertion, counsel submitted Employment Authorization Cards (File A70 522 853) issued to the applicant on July 22, 1999, June 16, 2000, June 4, 2001, and May 29, 2002, under the authority of 8 C.F.R. § 274A.12(c)(09).

The director concluded that the applicant had failed to overcome the grounds stated in the Notice of Intent to Withdraw and withdrew the applicant's TPS on December 20, 2002. On appeal, counsel again explained the applicant's confusion surrounding her required annual re-registrations.

The director may withdraw the status of an alien granted Temporary

Protected Status under section 244 of the Act if the alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status. 8 C.F.R. § 244.17(c).

On August 15, 1991, the Commissioner of the Immigration and Naturalization Service, now CIS, issued a memorandum discussing the use of discretion in cases of late re-registration for TPS. The Commissioner stated that an "alien's TPS should be withdrawn only when the alien willfully fails to re-register." In this case, it does not appear that the applicant "willfully" failed to re-register. Therefore, the director's decision to withdraw the applicant's Temporary Protected Status will, itself, be withdrawn.

The case will be remanded and the director shall fully adjudicate the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Hondurans. 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 director's decision is withdrawn. The case is remanded for further action.