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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 7 2004

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case 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 determined that the applicant failed to submit evidence, as had been requested, to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant states that she has resided in the United States since January 1994, and has filed each annual application for TPS. She further states that she has never failed to appear for any scheduled interview, and that she has submitted the requested evidence.

Aliens applying under the provisions for late initial registration must provide evidence to prove that they are eligible because during the initial registration period of January 5, 1999 through August 20, 1999, they fell within the provisions described in 8 C.F.R. § 244.2(f)(2).

The record reflects that the applicant filed her current TPS application on July 28, 2001. In a notice of intent to deny dated April 8, 2002, the applicant was requested to submit evidence to establish that she was eligible for filing after the initial registration period. The director noted that the response from the applicant, containing copies of previously issued employment authorization cards and a police clearance record, was insufficient. In her decision dated November 12, 2002, the Service Center director maintained that the Service records indicate that a previously filed Form I-821 (WAC 99 230 52160 filed on August 20, 1999) was denied by the Los Angeles district office on March 19, 2001, because the applicant failed to appear for a scheduled interview. She further noted that there was no evidence that the applicant filed an appeal or a motion to reconsider that decision, although the applicant claimed that the current application (SRC 01 252 56394 filed on July 28, 2001) was a renewal/re-registration application.

The applicant, on appeal, asserts that she never failed to appear for any scheduled interview in Los Angeles, California.

Upon review of the record of proceeding, it is found that the applicant did appear for her interview on January 17, 2001, as required, and that a sworn statement was taken by an officer of the Service on that day regarding her conviction for petty theft. The applicant's initial TPS application, filed on August 20, 1999 (WAC 99 230 52160), however, was denied in error on March 19, 2001, for lack of prosecution, pursuant to 8 C.F.R. § 103.2(b)(13), based on the director's finding that the applicant failed to appear for a scheduled interview. It is noted that this denial was a Memorandum to the File, and there is no evidence that a copy was sent to the applicant. Nor did the denial advise the applicant that she may file a motion to reopen this decision of the director.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act." Since the applicant <u>did</u> register during the initial registration period, and since the director's denial of that initial registration is invalid, the record does not support the director's conclusion that the current application is to be considered a late initial registration instead of an application for re-registration as indicated by the applicant.

It is noted in the record that the applicant was convicted in Dade County, Florida, on July 4, 1996, of petit larceny, a misdemeanor. The applicant, in this case, does not fall under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), as an alien who has been convicted of any felony or two or more misdemeanors committed in the United States.

The case is remanded. The director shall reopen the initial application and shall properly issue a new decision that addresses the evidence of record. Upon completion of the re-adjudication of the initial registration, the director shall reconsider the current application to determine whether the application is to be considered a re-registration or a new application for TPS. After re-adjudication of both Form I-821 applications, the case shall be certified to the AAO for review.

The burden of proof remains upon the applicant to establish that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act.

ORDER: The director's decisions are withdrawn. The case is remanded for further consideration and action in accordance with the foregoing.