



U.S. Citizenship
and Immigration
Services

MA-1

[REDACTED]

FILE: [REDACTED]
[LIN-02-231-51856]

Office: Nebraska Service Center

Date: JUN 22 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
Robert P. Wiemann, Director (FO)
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted

disclosure of information

DATE: 06/22/04

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded for further action.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 denied the application after determining that the applicant had failed to establish that she was eligible for filing after the initial registration period from January 5, 1999, to August 20, 1999.

On appeal, the applicant reasserted her claim of eligibility for TPS.

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."

The record reveals that the applicant did file an initial application for TPS during the initial registration period. That application was denied on May 10, 1999, after the director determined that the applicant had abandoned her application by failing to appear for her scheduled fingerprinting. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on June 27, 2002. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on May 10, 1999. That initial application was denied by the director on February 20, 2001. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed her current Form I-821 on June 27, 2002. Since the initial application was denied on February 20, 2001, this subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration and the applicant's eligibility for late registration must be determined.

In the denial of the current application, the director stated that on November 19, 2002, the applicant was requested to submit evidence establishing her eligibility for late registration. After determining that the applicant's response to this request was not sufficient to establish her eligibility for late registration, the director denied the application on February 27, 2003. However, neither the referenced November 19, 2002, Request for Evidence, nor the applicant's apparent response, is contained in the record of proceedings, as submitted to the AAO.

The case is remanded for further consideration and action. The director must enter the Request for Evidence and the applicant's response into the record of proceedings. If these documents cannot be located, the applicant must be given another opportunity to establish her eligibility for late registration before a new decision is rendered. The director shall review all CIS records pertaining to this applicant and all files relating to this individual's TPS application history shall be consolidated into the applicant's file. The director shall issue a new decision that, if adverse to the applicant, shall be certified to the AAO for review. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. 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 matter is remanded for further action.