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FILE:



Office: TEXAS SERVICE CENTER

Date: **DEC 05 2005**

[SRC 02 182 54672]

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:

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
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. 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 denied the TPS application [SRC 02 182 54672] on July 8, 2002, because the applicant failed to establish he was eligible for late registration.

A subsequent appeal from the director's decision was dismissed on December 27, 2002, after the Director of the AAO also concluded that the applicant had failed to establish that he was eligible for late registration.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits additional evidence. Some of the evidence submitted on motion indicates the possibility that the applicant may have timely filed for TPS during the initial registration period. Also, the records of CIS reflect another A-file record under the applicant's name and date of birth.

Under the record for A95 086.056, the applicant filed his TPS application on May 22, 2002. It is noted that this application had been signed on July 24, 2001, and submitted during the re-registration period. The application, however, was returned by the Texas Service Center because there was no evidence included with that submission indicating that the applicant had previously filed a TPS application during the initial registration period.

On June 12, 2002, the applicant was requested to submit additional evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was advised in this letter that he had met the requirements for nationality, continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. In response, the applicant submitted additional evidence relating to his continuous residence and continuous physical presence in the United States.

The director determined that the applicant had failed to establish his eligibility for late registration and denied the application on July 8, 2002. The applicant filed a timely appeal to this decision that was dismissed by the Director, AAO, on December 27, 2002.

The applicant's motion to reopen consists of documentation relating to his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. Included in this evidence is a photocopy of a money order from the applicant, payable to the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), marked as payment for Form I-765, Application for Employment Authorization, and Form I-821, Application for Temporary Protected Status, dated June 25, 1999. This money order indicates the possibility of a previous TPS filing.

The records of CIS reflect that the applicant had been issued a previous A-file record under [REDACTED]. Review of this A-file record reflects that the applicant filed an earlier TPS application [SRC 99 260 50365] on

August 23, 1999, that was not previously adjudicated by the Texas Service Center.¹ This initial TPS application includes some of the documentation the applicant submitted with his later applications, including: earnings statements for 1998 and 1999; Internal Revenue Service Form W-2, Wage and Tax statement for 1998; a furniture receipt dated in 1999; money transfer receipts dated in 1998 and 1999; his birth certificate, with English translation; and, his Honduran national identity document dated November 6, 1989.

Therefore, the case is being remanded for the director to consolidate the A-file records and to adjudicate the TPS application that has been pending since August of 1999.

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 case is remanded to the director for further action consistent with the above.

¹ The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999.