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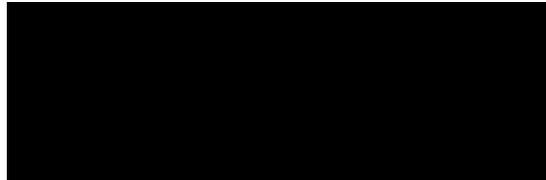
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Office: CALIFORNIA SERVICE CENTER

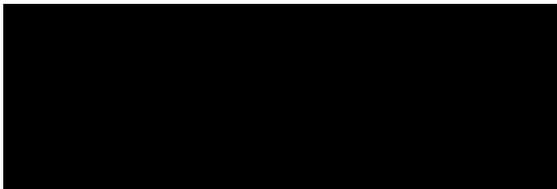
Date: **NOV 03 2005**

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:



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, California Service Center, and is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

The applicant is a native and citizen of Honduras who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record indicates that the applicant initially filed a Form I-821, Application for Temporary Protected Status, on January 21, 1999, during the initial registration period for Hondurans. On December 27, 2000, the applicant was sent an interview notice instructing her to appear at the Citizenship and Immigration Services (CIS) office in Los Angeles, California, on January 24, 2001, to be interviewed in connection with her application for TPS. The record indicates that the applicant failed to appear to be interviewed on the date indicated in the interview notice. The record contains a memorandum dated February 1, 2001, stating, "[t]he case is denied for Lack of Prosecution, as per 8 C.F.R. § 103.2(12); Applicant failed to appear for scheduled interview."

According to CIS records, the application was denied on November 19, 2001, but a supervisory hold was placed on the decision on the same date. CIS records further indicate that the supervisory hold was cleared and a notice of denial was mailed to the applicant on March 26, 2004; however, there is no copy of this decision in the record of proceeding. Nor does the record indicate that a denial decision based on the February 1, 2001, memorandum was issued to the applicant. Since there is no copy of this decision in the record of proceedings, it is not possible to determine the basis for the denial of the prior application for TPS.

The applicant subsequently filed the current Form I-821 on June 26, 2003.

The record indicates that the applicant was arrested in Los Angeles, California, on October 1, 1999, and charged with inflicting corporal injury on a spouse or cohabitant in violation of section 273.5(a) PC, a felony.

Pursuant to a notice dated November 14, 2003, the applicant was requested to submit evidence: to establish her eligibility for late initial registration; to establish her continuous residence in the United States since December 30, 1998 and her continuous physical presence in the United States since January 5, 1999; of police clearances from every city she has lived in since her arrival in the United States; and, the final court dispositions of all of her arrests since her arrival in the United States.

On February 19, 2004, counsel for the applicant responded to the notice. Counsel submitted evidence of identity and additional evidence in an attempt to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Counsel did not, however, submit any evidence to establish the applicant's eligibility for late initial registration or the final court disposition of the applicant's arrest on October 1, 1999.

The director determined that the applicant had "failed to register in a timely manner" and denied the application on March 2, 2004.

On appeal, counsel states that the applicant filed a timely TPS application. Counsel submits a photocopy of an unsigned Form I-821 and a certified return receipt indicating the Immigration and Naturalization Service (now CIS) received mail from an unidentified party on July 2, 2001.

The Form I-821 referenced by counsel was not a second filing of a TPS application. Rather, this Form I-821 was submitted without fee in conjunction with the filing of a Form I-765, Application for Employment Authorization, by the applicant on July 2, 2001.

When the applicant's initial application for TPS, filed in 1999, was denied on March 26, 2004 [or February 1, 2001], the current application for TPS had already been denied on March 2, 2004, for failure to establish the applicant's eligibility for late initial registration. Since the applicant did properly file an application during the initial registration period and that application had not been denied as of the date the current application for TPS was denied, the director erred in his determination that the applicant had failed to establish her eligibility for late initial registration. The applicant's initial application for TPS was still pending when the current application for TPS was denied.

Accordingly, the matter is remanded for incorporation of a copy of the Notice of Denial dated March 26, 2004, into the record of proceedings. The director shall provide the applicant with an opportunity to submit documentation of the final court disposition of her felony arrest, and shall issue a new decision. Based on the record as currently constituted, this is the only outstanding issue remaining as to 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 case is remanded for further consideration and action consistent with the foregoing.