



U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 25 2006**

[WAC 05 097 83281]

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.

Cindy N. Gomez for

Robert P. Wiemann, Chief
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 appeal will be sustained.

The applicant is a 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 applicant filed her initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 99 191 53234. The director denied that application on December 12, 2000, due to abandonment because the applicant failed to appear to be fingerprinted or request another appointment to be fingerprinted.¹ The director informed the applicant that there is no appeal from a denial due to abandonment, but that she could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision. The applicant filed a motion to reopen the denial decision on March 2, 2001. The director dismissed the motion on August 7, 2001, because it was not timely filed.

The applicant filed a second Form I-821, Application for Temporary Protected Status, on August 20, 2003, under CIS receipt number WAC 03 260 54585, and indicated that she was applying for late initial registration. The applicant provided proof that she qualified for late initial registration because her husband, Rigoberto Mejia, had been granted TPS under CIS registration number A73 908 982. On December 5, 2003, the director approved the application.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 5, 2005, and indicated that she had previously been granted TPS and was applying for annual re-registration.

The director erroneously denied the application on July 23, 2005, stating that the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of her temporary treatment 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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant was granted TPS on December 5, 2003. Therefore, she is eligible, and indeed is required, to re-register for TPS. Consequently, the director's decision to deny the application will be withdrawn the appeal will be sustained, and the application will be approved.

It is noted that the applicant has a warrant of removal issued at Los Angeles, California, on March 3, 1997, after she exhausted all appeal rights; this warrant remains outstanding.

¹ It is noted that the applicant had, in fact, appeared for fingerprinting but that the fingerprints were rejected by the Federal Bureau of Investigation.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. In this case, the applicant has met this burden.

ORDER: The appeal is sustained, and the application is approved.