



U.S. Citizenship
and Immigration
Services

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JUL 25 2006

FILE:

[REDACTED]
[SRC 99 180 50733]
[WAC 05 081 71422]

Office: CALIFORNIA SERVICE CENTER

Date:

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 initial application was denied by the District Director, Atlanta, Georgia. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case will be remanded for further consideration and action.

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 an initial application for TPS under receipt number SRC 99 180 50733. The District Director, Atlanta, Georgia, denied the application due to abandonment on July 27, 2001, because she found that the applicant had failed to respond to a request for additional evidence dated April 18, 2000. The applicant did not file an appeal or a request to reopen the case.

However, the record of proceedings reveals that the director's decision was in error. The applicant's fingerprint results report revealed that the applicant was arrested in Orange, Virginia, on December 2, 1996, and charged with forging a public document. On April 18, 2000, the applicant was requested to provide the final court disposition of this offense. The applicant was also requested to provide evidence to establish his identity and nationality and additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant was granted 90 days to respond to the request. The applicant's response to the request was received at the Texas Service Center on May 22, 2000, well within the specified response period. The applicant, in response, provided evidence to establish his identity and nationality and additional documentation relating to his residence and physical presence in the United States. The applicant also submitted a document from the Orange General District Court, Orange, Virginia, indicating that the applicant was originally charged with forging a public record or certificate in violation of Title 18.2 § 168 of the Virginia Code, a felony. On January 15, 1997, the charge was reduced to obstructing justice in violation of Title 18.2, § 460(a) of the Virginia Code, a Class 1 misdemeanor, and the applicant pled guilty to the reduced charge. Since the applicant responded to the request for additional evidence within the specified time period, it cannot be concluded that he abandoned his application. Furthermore, since the applicant has provided evidence establishing that he has only been convicted of one misdemeanor, he is not ineligible for TPS based on a record of a felony conviction or two or more misdemeanor convictions.

Consequently, the director's denial of the initial application will be withdrawn; the application will be remanded for a new decision. The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will also be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Salvadorans.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.