



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 03 2006
[WAC 99 129 52408]

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:
[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 (AAO) on appeal. 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 application on January 31, 2001, after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reveals that the applicant filed his initial TPS application on March 17, 1999. On February 25, 2000, the applicant was requested to submit additional evidence establishing his identity and nationality. The applicant was also requested to provide the final court dispositions of all arrests since his arrival in the United States.

The director determined that the applicant had abandoned his application by failing to respond to the request for additional evidence and denied the application on January 31, 2001. However, the applicant did respond to the request for additional evidence. The applicant's response was received at the California Service Center on April 17, 2000, prior to the issuance of the denial decision. The applicant, in response, provided photocopies of various Nevada photo identity documents, the result of a "name only" criminal record search by the Las Vegas Metropolitan Police Department, Las Vegas, Nevada, and a photocopy of his Honduran elementary school completion certificate.

The director erroneously advised the applicant that he could file an appeal from this decision within 30 days. It is noted that the applicant responded to the denial decision on March 9, 2001, more than 33 days after the issuance date of the denial decision; therefore, the applicant's response was not timely filed.

As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. The director's error does not, and can not, supersede the regulations. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the applicant, to date, has not provided the final court dispositions of all arrests in the United States or a photocopy of an official Honduran photo identification document to establish his identity and nationality.

It is further noted that the applicant was apprehended by the United States Border Patrol near the Hidalgo, Texas, Port of Entry on November 19, 1988, after having entered the United States without inspection. The applicant was placed in removal proceedings. On August 17, 1989, the applicant filed a Form I-589, Request for Asylum in the United States. On December 5, 1989, an Immigration Judge in Phoenix, Arizona, denied

the applicant's applications for asylum and for withholding of removal and ordered the applicant removed to Honduras. On December 18, 1989, the applicant filed an appeal from the order of the Immigration Judge with the Board of Immigration Appeals (BIA). The BIA dismissed the appeal as untimely filed on July 6, 1993. The United States Court of Appeals, 9th Circuit, dismissed the applicant's petition to review the decision of the Immigration Judge and the BIA as untimely filed on January 7, 1994. On October 23, 1997, the applicant filed a motion to reopen the removal proceeding with the BIA. The BIA denied the motion as untimely filed on August 7, 1998. The record contains an outstanding warrant of removal issued by the District Director, Phoenix, on September 28, 1998.

Finally, it is noted that the applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on January 19, 2005 under Citizenship and Immigration Services (CIS) receipt number WAC 05 111 73594. The applicant indicated that he had previously been granted TPS and was applying for annual re-registration. The director denied the application on April 20, 2005, because the applicant's initial TPS application had been denied and he was not eligible for annual re-registration. The applicant filed an appeal from the denial decision on May 4, 2005. That appeal will be addressed in a separate decision.

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 and entry of a decision.