



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy
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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 20 2006**

[WAC 05 063 72504]

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, 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 appeal will be dismissed.

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 record reveals that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) [receipt number SRC 99 188 50060.] The director denied that application on December 1, 2003, because the applicant had failed to comply with her request to submit the final court disposition for his March 21, 1999 arrest for assaulting a family member. The director also found that the applicant had failed to submit a photocopy of his original birth certificate with English translation as requested.

On appeal, counsel states the applicant had ineffective assistance of counsel; a notary public that was handling his case and helping with document preparation before an attorney was hired in July 2005. Counsel further states the applicant's initial application was timely filed and that non-renewal of the applicant's work permit will make it extremely difficult for him to provide for his young children.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel or the authorized representative with respect to the actions to be taken and what representations counsel or the representative did or did not make to the respondent in this regard, (2) that the person whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has failed to submit an affidavit in support of his claim, evidence confirming that counsel or authorized representative has been notified of the incompetence claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities. To the extent that the applicant has failed to produce evidence sufficient to substantiate an ineffective assistance of counsel claim, the AAO will review the record applying standard statutory and regulatory eligibility requirements and burdens of proof.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 2, 2004, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

If an alien is filing a re-registration application, 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.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that on December 21, 1998, a Form I-862, Notice to Appear, was issued to the applicant ordering him to appear for a hearing before an Immigration Judge on a date and time "to be set."

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.