



U.S. Citizenship
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Services

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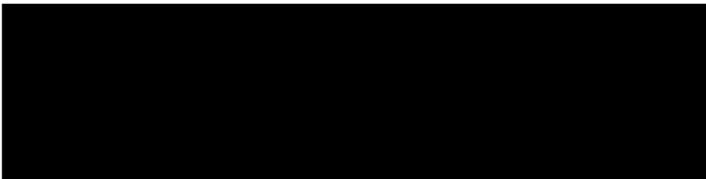
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **APR 05 2005**
[WAC 05 064 77371 as it relates to WAC 99 128 50509]

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:



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 M. Gomez
for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO), and the application will be approved. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the AAO on appeal. The appeal will be sustained and the application will be approved.

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 applicant filed an initial application for TPS on March 5, 1999, under Citizenship and Immigration Services (CIS) receipt number WAC 99 128 50509. The director denied the initial application due to lack of prosecution on January 9, 2000, after determining that the applicant had failed to appear for a scheduled interview.

However, the record of proceedings is devoid of any evidence to show that the applicant was requested to appear for an interview. In fact, the date of that scheduled interview was not included on the Memorandum of "Denial of TPS Application for Lack Of Prosecution," dated January 9, 2000. It is noted that on May 16, 2000, the Director, California Service Center, transferred the applicant's file, containing "an unadjudicated I-821 application," to the District Director, Los Angeles, California, to "interview the applicant to determine eligibility and complete the adjudication of the Form I-821." The record indicates that the applicant appeared for that interview at the Los Angeles district office on August 29, 2000.

The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. The applicant's one misdemeanor conviction of "reckless driving/no injury," on September 10, 1996, in the Municipal Court of the Los Angeles Metro Branch Judicial District, County of Los Angeles, California, under Case No. [REDACTED] does not render the applicant ineligible for TPS under section 244(c)(2)(B)(i) of the Act. Therefore, the director's decision will be withdrawn, and the initial application will be approved.

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 approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

The record also shows that Form I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, was issued on May 26, 1988, in San Diego, California, based on the applicant's entry into the United States without inspection on or about May 25, 1988. In removal proceedings held in Los Angeles, California, on May 7, 1991, the applicant failed to appear; therefore, the Immigration Judge ordered the applicant removed to Honduras *in absentia*. A Form I-205, Warrant of Removal/Deportation, was issued on October 2, 1991. The applicant failed to appear at the Los Angeles district office on October 28, 1991, for his enforced departure. It is further noted that the applicant failed to appear at a scheduled interview on December 7, 1995, regarding his application for asylum. A Notice to Appear (Form I-862) was also issued on September 15, 1998. Because the applicant was still subject to the outstanding Warrant of Removal/Deportation issued in 1991, the Immigration Judge terminated proceedings relating to the second Order to Show Cause issued on September 15, 1998.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved, and the appeal is sustained.