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U.S. Citizenship  
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Services

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DEC 06 2007

FILE:

[LIN 03 006 53336]  
[LIN 04 016 53898]

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

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APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

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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, Nebraska Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted and the previous decision of the AAO will be withdrawn and the matter remanded.

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 service center director determined that the applicant failed to establish that she had submitted her annual re-registration. The director, therefore, stated that he was withdrawing her TPS, and denied the application.

On appeal, counsel for the applicant stated that the applicant attempted to renew TPS prior to the filing deadline, but was given inaccurate information by a CIS officer.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on August 22, 2003.

On motion to reopen, counsel for the applicant reasserted that the applicant attempted to reregister for TPS, and that she was submitting the motion for the third time.

The applicant is a native and citizen of Honduras who indicated on her application that she entered the United States without a lawful admission or parole in November 1998. The director subsequently withdrew the applicant's Temporary Protected Status on April 7, 2003, when he determined that the applicant had failed to submit evidence that she had filed for re-registration for the period of July 6, 2001 to July 5, 2002. The applicant appealed the decision and the AAO director subsequently denied the appeal.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite period.

An alien who has been granted Temporary Protected Status must register annually with the district office or service center having jurisdiction over the alien's place of residence 8 C.F.R. § 244.17(a).

On December 3, 2002, the director notified the applicant that her Temporary Protected Status would be "withdrawn unless you can submit additional evidence to show that you filed for re-registration from July 6, 2001 to July 5, 2002."

The applicant failed to respond to the notice.

The director concluded that the applicant had failed to overcome the grounds stated in the Notice of Intent to Withdraw and withdrew the applicant's TPS on April 7, 2003.

On appeal, counsel explained that the applicant attempted to re-register prior to the deadline. According to counsel, the applicant traveled to the Indianapolis, Indiana CIS office, and was told that the re-registration had to be filed with the Nebraska Service Center, and that the re-registration deadline was December 5, 2002. Counsel

states that the applicant relied on this misinformation and filed her re-registration for TPS on or about July 18, 2002.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act if the alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status. 8 C.F.R. § 244.17(c).

In this case, it does not appear that the applicant "willfully" failed to re-register. Furthermore, there is nothing in the record to indicate that the initial TPS application had been approved. Consequently, there was no approval to withdraw and the director should have indicated that he was denying the application. Therefore, the director's decision to withdraw the applicant's Temporary Protected Status, will, itself, be withdrawn.

The case will be remanded and the service center director shall fully adjudicate the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Hondurans. 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 AAO director's decision is withdrawn. The case is remanded for further action.