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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[LIN 02 202 53459]

Office: CALIFORNIA SERVICE CENTER

Date: DEC 14 2007

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, (NSC), and is now before the Administrative Appeals Office on appeal. The appeal will be sustained, and the application 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 record reveals that the applicant filed a Form I-821, Application for Temporary Protected Status, under Citizenship and Immigration Services (CIS) receipt number LIN 99 102 53680. The NSC Director approved that application on September 9, 1999. On May 23, 2002, the applicant filed a second Form I-821 for re-registration that was accepted for processing under CIS receipt number LIN 02 202 53459.

On August 29, 2002, the NSC Director sent the applicant a Request for Evidence informing her that her Form I-765, Application for Employment Authorization, would not be processed until she had returned a completed I-821 application containing a current original signature and date. The director gave the applicant until November 21, 2002, to comply with the RFE. However, on October 22, 2002, before the November 21, 2002 deadline had been reached, the NSC Director denied the second Form I-821.

In his October 22, 2002 decision, the NSC Director stated that in correspondence dated August 29, 2002, the Service had requested that the applicant submit evidence of the completed 4 page I-821 application. It is noted that the August 29, 2002, RFE requested that the applicant return a completed I-821 application and said nothing about the fact that the applicant's May 23, 2002, I-821 did not contain a completed page four. The director also referred to the applicant as being El Salvadorian and not Honduran and outlined the regulations for El Salvadorian natives and citizens and the rules for late registration which did not apply to the applicant in this case. Additionally, the NSC Director also outlined evidence that the applicant was informed that she must submit. The RFE did not include any such request.

The applicant's former counsel filed an appeal to the NSC Director's October 22, 2002 determination on December 19, 2002. The NSC Director considered this late appeal as a motion to reopen. The NSC Director then erroneously found that the applicant was appealing the denial of her I-765 and not her I-821. On February 4, 2003, the director determined that the applicant's I-765 was correctly denied because the applicant failed to submit page 4 of the I-821 application.

The applicant's appeal to the NSC Director's February 4, 2003 decision is now before the AAO.

It is noted that on June 19, 2003, the applicant submitted a completed I-821 signed by her on June 1, 2003.

In this case, the applicant's period of time to comply with the NSC Director's RFE was cut short. The Director then denied her re-registration application for reasons that were not included in the RFE. Even so, the applicant continued to try to comply with the Director's request and forwarded a completed I-821 on June 19, 2003. It does not appear that the applicant "willfully" failed to re-register for TPS nor was her previous approval for TPS correctly withdrawn. There are no other known grounds of ineligibility; therefore, the director's decision will be withdrawn and the appeal will be sustained.

An alien applying for TPS has the burden of proving that he or she meets the above requirements and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The director's decision is withdrawn and the appeal is sustained.