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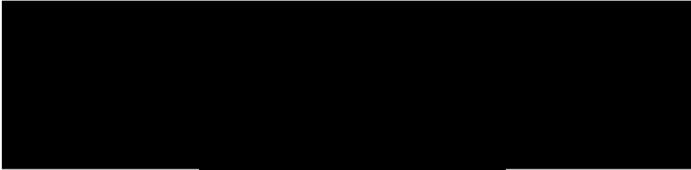
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



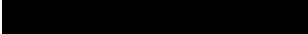
U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: California Service Center

DATE:

JUN 14 2007

[WAC 05 104 71581--  
as it relates to  
SRC 99 262 54172]

IN RE:

Applicant:



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

ON BEHALF OF APPLICANT: Self-represented

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 re-registration application was denied by the Director, California Service Center (CSC). It is now on appeal before the Administrative Appeals Office (AAO). The case will be remanded to the director for further consideration and action.

The applicant is a 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 re-registration application on August 1, 2005, on the ground that the initial application had been denied on October 10, 2002, thereby making the applicant ineligible to re-register for TPS under section 244 of the Act.

On appeal the applicant requests that his case be reviewed.

The record shows that the applicant filed an initial Form I-821, Application for Temporary Protected Status, at the Texas Service Center [SRC 99 262 54172] on August 23, 1999, which was three days after the close of the initial registration period (January 5, 1999 – August 20, 1999) for TPS applicants from Honduras. On March 6, 2002, the TSC Director issued a Notice of Intent to Deny (NOID), giving the applicant 30 days to provide evidence of his identity and nationality, his eligibility for late registration, his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The 30-day response period expired with no response from the applicant. On October 10, 2002, therefore, the director denied the TPS application on the ground of abandonment, in accordance with the regulation at 8 C.F.R. § 244.9(c).

A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. *See* 8 C.F.R. § 103.2(b)(15). The applicant subsequently filed two Forms I-290B (motions to reopen), accompanied by additional documentation, both of which were rejected by the TSC Director as untimely filed. After the applicant filed yet a third Form I-290B, the TSC Director examined the entire file, determined that the evidence requested in the NOID had been presented, and concluded that the applicant had established his eligibility for TPS. On October 5, 2004, the TSC Director granted the motion to reopen and approved the application for TPS.

On January 12, 2005, the applicant filed a second Form I-821 with the California Service Center [WAC 05 104 71581] to re-register for TPS. On August 1, 2005, the Director, CSC, denied the re-registration application on the ground that the initial TPS application had been denied on October 10, 2002, making the applicant ineligible to re-register for TPS. The decision of August 1, 2005, was erroneous, however, since the original denial of TPS had been overturned by the TSC Director's later decision on October 5, 2004, to approve TPS for the applicant. Accordingly, the decision on the re-registration application will be withdrawn.

Subsequent to the approval of the initial application, a report was received from the Federal Bureau of Investigation (FBI) based on the applicant's fingerprints, dated March 31, 2005, indicating that the applicant has been arrested twice by the Miami Police Department in Miami, Florida. The first arrest, on a felony charge of aggravated battery, occurred on December 5, 1999. According to the FBI report, the charge was dropped on December 27, 1999. The second arrest, on a misdemeanor charge of driving with a suspended license, occurred on August 4, 2004. The FBI report does not indicate the final disposition of that charge.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. *See* Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. *See* 8 C.F.R. § 244.14(a)(1).

The FBI report does not provide sufficient evidence of the final disposition of the applicant’s two arrests. To determine whether the re-registration application currently on appeal is approvable, and whether the applicant’s previously approved TPS should be withdrawn, the record must be supplemented by court records showing the final dispositions of the applicant’s two arrests in 1999 and 2004 (and any other arrests). The case will therefore be remanded to the CSC Director for the purpose of requesting additional evidence from the applicant, reconsideration of the initial application, and the issuance of a new decision on the re-registration application.

In adjudicating the case on remand, the CSC Director should also address the issue of the late filing of the initial application – by three days – in August 1999, and how the applicant qualifies for late registration under the criteria of 8 C.F.R. § 244.2(f)(2).

As always in these proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The case is remanded to the director for further consideration and action consistent with the above.