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FILE: [REDACTED]
[WAC 05 061 70386]

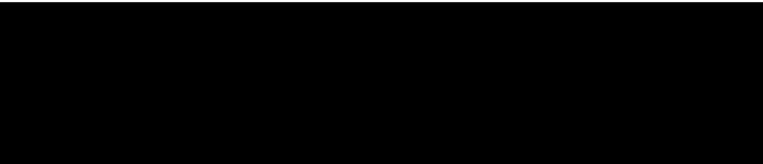
OFFICE: California Service Center

DATE: NOV 26 2007

IN RE: Applicant: [REDACTED]

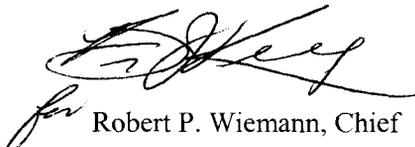
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). It is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the application will be remanded for further consideration and action.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 record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, at the Vermont Service Center (VSC) in June 1999 [EAC 99 206 51158]. On December 15, 1999, the VSC issued a notice requesting the applicant to submit documentary evidence within 12 weeks that she had been physically present in the United States from January 5, 1999, to the date her TPS application was filed (June 7, 1999). After the applicant failed to respond to the request for evidence, the VSC Director denied the application on the ground of abandonment, in accordance with 8 C.F.R. § 103.2(b)(13), on June 2, 2000.

The applicant filed the current application at the California Service Center on November 24, 2004, identifying it as an application to re-register for TPS. Citizenship and Immigration Services (CIS) records indicate that the application was denied on June 30, 2005. On August 18, 2005, however, the CSC sent the applicant's representative a notice stating that the application was being reopened or reconsidered, and that a separate notice would be issued "once all action has been completed." On August 31, 2005, the CSC Director issued a Notice of Decision denying the re-registration application on the ground that the initial TPS application had been denied for failure to establish prima facie eligibility, thereby making the applicant ineligible to re-register for TPS under section 244 of the Act. The applicant has appealed that decision.

The director's denial decision was improper in view of the previous notice that the application was being reopened or reconsidered. The director did not discuss having reopened the case based on new facts or having reconsidered his previous denial due to an incorrect application of law or Service policy. Instead, he denied the application on the basis that the previous application had been denied.

The case will be remanded for further consideration consistent with the CSC's notice of August 18, 2005. The CSC Director shall issue a new decision that fully discusses the issues involved in reopening the application or reconsidering the previous decision, and the final outcome of that reopening or reconsideration.

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 action consistent with the above and the entry of a decision.