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U.S. Citizenship
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Services

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[REDACTED]

M

FILE:

[REDACTED]

OFFICE: TEXAS SERVICE CENTER

DATE: **OCT 17 2007**

[SRC 02 224 53005]

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:

[REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC). The case was subsequently reopened and the application was again denied by the TSC director. The case is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

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 director denied the application after determining that the evidence submitted did not establish that the applicant was eligible for late initial registration.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed his TPS application on July 2, 2002. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2).

A review of the record indicates that on September 23, 2002, a notice of intent to deny was issued according the applicant 30 days in which to submit evidence to establish: (1) his identity; (2) that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999; and (3) that he was eligible for filing after the initial registration period had closed. The director determined that the applicant had not submitted all of the requested information within the 30-day response period and denied the application due to abandonment on November 20, 2002.

On December 3, 2002, counsel for the applicant filed a motion to reopen, and provided evidence to establish that the applicant had responded to the request to submit additional evidence. He asserts that the applicant claimed that he had filed a TPS application during the initial registration period, that his minister helped him to complete the forms and "he himself drove the paperwork to the U.S. post office." Counsel requested that the TSC office search for the initial application because the applicant is "100% certain that he filed this." He also requested that the office look for the applicant's file, and to do more than a cursory search through the computer, because there is an application somewhere in the office. Counsel submitted a statement from the applicant in which the applicant claimed that he had filed for TPS in June 1999, that a pastor in Nags Head, North Carolina, assisted with his application form, he bought a money order and mailed his TPS package to TSC, but unfortunately he did not send the package by certified mail and he did not detach the money order stub; therefore, he has no way of tracing the money order. The applicant further stated that because he had not heard from the TSC regarding his application, he sought help with a non-profit agency, and the attorney sent a "TPS/EAD renewal form for us to INS on May 31, 2000."

Based on counsel's motion, the director reopened the proceedings for reconsideration. After review of the record, the director determined that the evidence submitted did not establish that the applicant was eligible for late registration, and again denied the application on January 27, 2003.

On appeal, counsel asserts that the applicant filed for TPS during the initial registration period; however, he was not represented by an attorney, and that the applicant has no proof that he filed; however, applications are known to have been misplaced and the application is probably "laying somewhere around the TSC office," and is "clearly not in the computer." Counsel subsequently submitted a copy of a statement from [REDACTED] in which he states that he had helped the applicant to fill out his TPS application forms in June 1999.

A review of the record of proceeding indicates that the applicant filed TPS extension/re-registration applications on July 3, 2000. The applications were rejected and returned to the applicant on August 9, 2000, and he was advised to resubmit the applications with two ADIT style photos. On September 11, 2000, the applications were again rejected for submission of fees. On August 7, 2001, the applicant filed another TPS extension/re-registration, under receipt number SRC 01 252 51413. It is also noted that on October 29, 2001, the applicant was requested to submit proof that he had properly filed an initial TPS application between January 5, 1999 and August 20, 1999. Counsel responded on December 5, 2001, by submitting copies of Form I-821 and Form I-765 signed and dated June 16, 1999, and claimed that the applications were filed in June 1999. An Employment Authorization Card was ultimately issued to the applicant on December 20, 2001, with a validity date from December 19, 2001 until July 5, 2002. The applicant was assigned file number [REDACTED]

Therefore, the case will be remanded, and the director shall review all CIS records pertaining to this applicant and all files relating to this individual's TPS application history shall be consolidated into the applicant's permanent record. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 director's decision is withdrawn. The case is remanded for further action.