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**U.S. Citizenship
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FILE:



Office: California Service Center

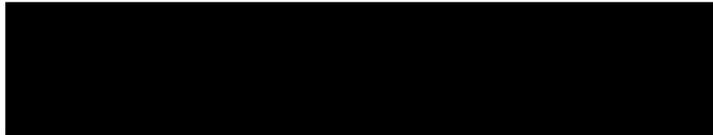
Date:

SEP 06 2007

[WAC 05 102 71935 as it pertains to LIN 99 176 53096]

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.

Cindy N. Somers
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Nebraska Service Center. A subsequent application for re-registration was denied by the Director, California Service Center (CSC), and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office. The appeal will be sustained and the applications will be approved.

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 TPS application on June 1, 1999, under CIS receipt number LIN 99 176 53096. The Director, Nebraska Service Center denied that application, on January 18, 2000, because the applicant failed to respond to the director's request, issued on August 31, 1999, to submit evidence of the applicant's continuous physical presence since January 5, 1999. The director, therefore, considered that application abandoned. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record reflects that the applicant filed two motions to reopen/reconsider. The first motion to reopen was filed on May 28, 2003. The director rejected the motion, as untimely, on July 19, 2003. The applicant filed a second motion to reopen/reconsider on October 23, 2003. The director also denied that motion, as untimely, on January 26, 2004.

The applicant filed another Form I-821, Application for Temporary Protected Status, on January 10, 2005, under CIS receipt number WAC 05 102 71935, and indicated that she was re-registering for TPS.¹ The director denied that application on July 23, 2005, because the applicant's initial TPS application had been denied.

The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. The record of proceeding also contains sufficient evidence to establish the applicant's identity and nationality, her continuous residence in the United States prior to December 30, 1998, and her continuous physical presence in the United States from January 5, 1999 to the date of filing her application. The record of proceedings contains evidence such as a Florida birth certificate for the applicant's child to whom she gave birth on May 7, 1998; medical records for the applicant for the period of several months after she gave birth to the child; and a Florida photo identification card issued to the applicant on June 5, 1998. Therefore, the director's decision will be withdrawn and the initial application will be approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

¹ The applicant filed additional applications in 2001, 2002, 2004, and now, in 2007.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The initial application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.