



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: AUG 07 2008
[EAC 07 129 51381, appeal]
[EAC 99 123 51137]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant is stated to be a native and citizen of Honduras who was granted Temporary Protected Status (TPS) on June 13, 2000. The director withdrew the applicant's status on March 23, 2007, because the applicant "had been convicted on August 15, 2005, for manufacture, distribution and dispense of cocaine."

On appeal, the applicant states:

I filed my I-765 since 1999 and I always got approved, but on 2002 [REDACTED] stole my Employment authorization Card but I did report with New Brunswick Police so He move to different address and He use my name Since he stole my identification but on 2004 He went to Jail but I did not know for what reason or if he gave my name to the Court but I have the prove 3 years of Income tax that I never been in Jail my Sopprise was when I got notice from INS that my I 821 and I 765 was denied because I am a drug deler and I never did Something Like that I my Life Please check all documentation that Is and fo you and you will se what I said is true.

The record reflects that an alien claiming to be named [REDACTED] was deported under case number [REDACTED] from the United States at Laredo, Texas, on May 2, 2007, after an Immigration Judge in Newark, New Jersey ordered him removed to Honduras on April 16, 2007. The record shows that that individual received a final discharge under the name [REDACTED] from the State of New Jersey Department of Corrections on March 26, 2007, upon the expiration of his maximum sentence for his conviction in the New Jersey Superior Court of Middlesex County for the offense of Possession With Intent to Distribute (Cocaine), Case No: [REDACTED]. Based upon his assertion as to his real name, the person discharged from prision under the name [REDACTED] was deported from the United States on April 16, 2007 under the name [REDACTED]. However, the record does not firmly establish that the person convicted of the serious drug charge and deported on May 2, 2007 and the applicant are the same individual. Therefore, the director's withdrawal of the approval of the initial application will be set aside and the case will be remanded for a new decision.

Notwithstanding the applicant's protestations of innocence, it is realized that he *may* have been the one convicted of the drug charge(s) and the person deported to Honduras. Therefore, the director shall conduct a complete inquiry to determine the applicant's identity and nationality, his continuous residence and continuous physical presence in the United States during the required periods and his criminal background, if any. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

It is noted that the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision.