

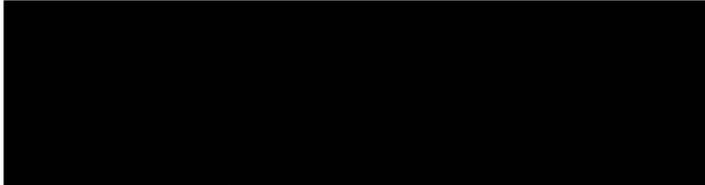
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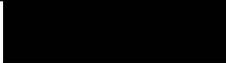
U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date: JAN 23 2008

[EAC 03 205 51503]

INRE:

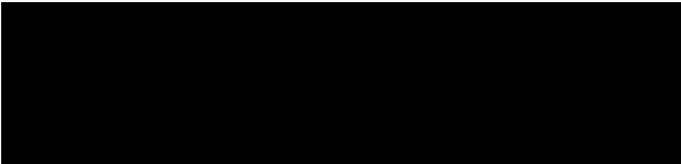
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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

1/ Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Vermont Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened by the Chief, Administrative Appeals Office. The appeal will be sustained and the application will be approved.

The applicant is a citizen of Honduras who is seeking Temporary Protected Status (IPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed a late initial TPS application on June 23, 2003, under CIS receipt number EAC 20551503. The director denied that application on November 3, 2003, after determining that the applicant failed to establish eligibility for late initial registration, and failed to establish his continuous residence and his continuous physical presence in the United States.

However, the applicant is eligible for late initial registration. It is noted that the applicant had a pending Adjustment of Status Application, Form 1-485, as the beneficiary of a Petition for Alien Relative, Form 1-130. The record reflects that the 1-130 petition was denied on February 24, 1998; however, the denial notice was mailed to the applicant's former address and was returned as undeliverable. The record also reflects that on November 2, 1996, the 1-130 petitioner (the applicant's spouse) submitted a change of address letter notifying the service of a change of address. However, despite the change of address, the record indicates that the director continued to send notices to the applicant's old address. Evidently, the applicant first became aware of the denial of the 1-130 petition on May 10, 2003, after a FOIA request. The TPS application was filed on June 23, 2003, within 60 days of the applicant's receipt of the denial of the 1-130 petition, and the denial of the 1-485. Therefore, the applicant has established that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(t)(2).

The record 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 proceedings reveals that the fingerprints are cleared. Specifically, an FBI fingerprint check conducted in connection with the re-registration application shows no derogatory information. The record contains sufficient evidence to establish the applicant's identity and nationality, and ample evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The record of proceedings contains the applicant's Honduras passport. Therefore, the director's decision will be withdrawn, and the application will be approved.

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

ORDER: The application is reopened and the director's denial of the application is withdrawn. The application is approved. The appeal is sustained.