



U.S. Citizenship
and Immigration
Services

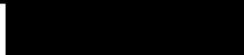
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

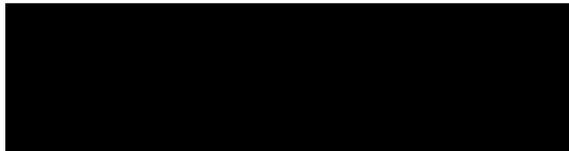
DATE: OCT 05 2007

[SRC 99 215 50168]

[WAC 05 053 72497]

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:



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 initial application was denied by the Director, Texas Service Center (TSC). The application for re-registration was also denied by the Director, California Service Center (CSC), and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, the case will be reopened, *sua sponte*, and the applications will be approved.

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 record reveals that the applicant filed a TPS application during the initial registration period on July 6, 1999, under receipt number SRC 99 215 50168. The TSC director denied that application based on abandonment on November 24, 2004, after determining that the applicant had abandoned her application based on her failure to appear for fingerprinting.

The applicant filed a subsequent TPS application on November 22, 2004, under Citizenship and Immigration Services (CIS) receipt number WAC 05 122 70145, and indicated that she was re-registering for TPS. The CSC director denied the re-registration application on June 24, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The applicant appealed the CSC director's decision to the AAO on [REDACTED]. The AAO dismissed the appeal on [REDACTED], after determining that the applicant had not previously been granted TPS; therefore, he was not eligible to re-register for TPS or to renew temporary treatment benefits. The AAO also indicated that if the applicant was attempting to file a late initial application for TPS instead of an annual re-registration, he had failed to provide any evidence to establish that the application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2).

On motion, former counsel asserts that the director's decision that the applicant failed to report for fingerprinting is incorrect because the applicant was fingerprinted on [REDACTED]. He further asserts that the director's decision stating that the applicant had not previously been granted TPS is also incorrect, because the applicant was granted TPS on [REDACTED] and was subsequently renewed on [REDACTED] and on [REDACTED]. He submits copies of the applicant's Employment Authorization Cards (EAD) to support his claim. The fact that the applicant was issued EADs is not evidence that she was approved TPS. Based upon filing of the I-821 application for TPS, the applicant was afforded temporary treatment benefits and was issued Employment Authorization upon establishing *prima facie* eligibility¹ for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

The record, however, indicates that the applicant subsequently was fingerprinted and the Federal Bureau of Investigation (FBI) fingerprint results reports dated [REDACTED] do not reflect a criminal record that would bar the applicant from receiving TPS. It is noted that the applicant had previously submitted, in response to a notice of intent to deny dated [REDACTED], the records of the Circuit Court, Martin County, Florida, indicting that the applicant was arrested on [REDACTED], by the Department of Environmental Protection, Division of Law Enforcement, County of Martin, Florida, and

¹ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

charged with "Removal of Plant Life in State Preserve," [REDACTED] On October 1, 1998, the applicant was convicted of the offense, and she was ordered to pay \$100. It is noted that this arrest and conviction was not listed on the FBI report. However, the applicant's one misdemeanor conviction does not render her ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), as an alien who has been convicted of a felony or two or more misdemeanors committed in the United States.

The applicant, therefore, has overcome the sole ground for the denial of her initial application for TPS. The record of proceeding contains sufficient evidence to establish the applicant's eligibility for TPS and also does not reflect any grounds that would bar the applicant from receiving TPS. Additionally, the applicant has furnished sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Therefore, the decisions of the TSC director and the CSC director to deny the initial application and the re-registration application, respectively, will be withdrawn and the TPS applications will be approved.

An alien applying for Temporary Protected Status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The decision of the TSC director dated November 24, 2004, the decision of the CSC director dated June 24, 2005, and the decision of the AAO dated June 26, 2006, are withdrawn and the TPS applications are approved.