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FILE:

Office: VERMONT SERVICE CENTER

Date: **MAR 19 2009**

[LIN 03 172 55014, *appeal*]

[LIN 02 295 51948, as it relates to WAC 99 121 52894]

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

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center (CSC). A subsequent application for re-registration was denied by the Director, Nebraska Service Center (NSC), and is currently before the Administrative Appeals Office on appeal. The case will be remanded to the Director, Vermont Service Center, for further action and consideration.

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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number WAC 99 121 52894. The CSC director denied the application on November 28, 2000, because the applicant had abandoned his application by failing to appear for fingerprinting.

The applicant filed a subsequent Form I-821 on September 16, 2002, under receipt number LIN 02 295 51948, and indicated that he was re-registering for TPS. The NSC Director denied the application because the applicant had not established he was eligible for late initial registration.

As stated above, the CSC Director denied the initial application after determining that the applicant had abandoned his application by failing to respond to a request to appear for fingerprinting. However, the record reflects that the applicant's fingerprints were taken and sent to the Federal Bureau of Investigation, (FBI), by U.S. Citizenship and Immigration Services on November 29, 2002, February 10, 2005 and on March 31, 2006. The applicant's FBI fingerprint report results identified no derogatory information. The applicant has satisfied all other eligibility requirements for TPS, however, the record does not contain current fingerprints for the applicant.

The director's denial of the current application is dependent upon the adjudication of the initial application. The director's denial of the initial application will be withdrawn and the application will be remanded for a new decision. Since the initial application is being remanded, the decision on the re-registration application will be remanded to the director to schedule an appointment for the applicant to be fingerprinted. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Hondurans.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.