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U.S. Department of Homeland Security
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U.S. Citizenship
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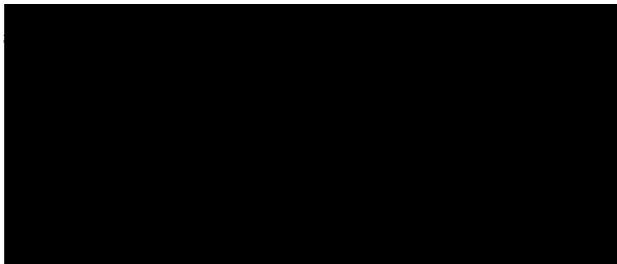


FILE: [REDACTED]
[SRC 99 127 51967]

Office: TEXAS SERVICE CENTER

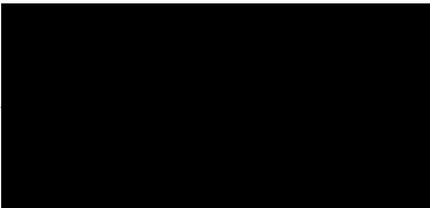
Date: SEP 29 2005

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and the case is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

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 director denied the application because the applicant had not provided the court disposition for an arrest that was uncovered as a result of her FBI background check. That check reflected that she had been arrested by the Irving Police Department in Irving, Texas for forgery.

In response, counsel forwards a letter dated December 29, 2003 from the Deputy Clerk of the Dallas County District Criminal Courts indicating that their indexes do not show any charges or convictions filed against the applicant for the period from 1973 through December 28, 2003. Counsel also submits an affidavit from the Records Clerk of the Irving Police Department of the City of Irving, Texas in which she attests that the applicant was arrested for Forgery on June 20, 1993.

The record contains a facsimile that was transmitted from the Irving Police Department to the director dated July 9, 2002 concerning the applicant's forgery arrest. That document acknowledges the applicant's arrest on June 20, 1993 and concludes with an explanation by one of the Irving police officers that since the offense was a federal matter, the Police Department would file no charges against the applicant. However, if any charges were to be filed, they would be filed by an agent of the United States Department of Agriculture (USDA), (as the charges involved food stamps), at a later time. The record contains no indication that the USDA filed charges.

In this case, the director already had information in the file indicating that the Irving Police Department was not going to file any charges in court against the applicant. The FBI report relied upon by the director documented the arrest of the applicant but made no mention of a charge being filed against her by the USDA. The director had information in the file indicating that there was no court case in this matter. Therefore, a denial because the applicant had not submitted a court disposition for a court case that had not been brought against her was not appropriate.

Therefore, the matter will be remanded and the director shall fully adjudicate the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. In these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for further action.