

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

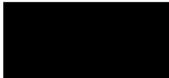


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

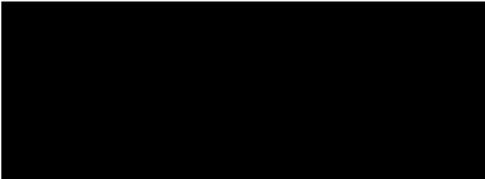
MI



FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 02 2006
[WAC 05 069 75895] consolidated herein]

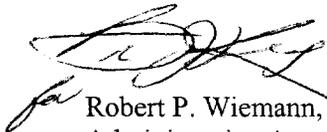
IN RE: Applicant: 

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 application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) on July 18, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 99 230 50676.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 10, 2004, under CIS receipt number WAC 05 069 75895. The director denied this application on September 28, 2005, after determining that the applicant had abandoned his application by failing to respond to a request dated June 9, 2005, to submit the final court dispositions of his arrests in Chula Vista, California, by the U.S. Border Patrol on October 31, 1990, and on February 28, 1993.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

Counsel responded to the director's decision on October 26, 2005, by filing Form I-290B, Notice of Appeal to the Administrative Appeals Unit. He states that he was advised by the U.S. Border Patrol in Chula Vista that any records of court hearings or arrests by U.S. Border Patrol would only be found in the A-File, and would not be kept by the Border Patrol. Counsel states that a FOIA request has been filed and that he be granted 90 days to submit a brief and/or evidence.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, as the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the record of proceeding does not contain the Form I-821 [WAC 05 069 75895] that counsel is now appealing. Therefore, the case will also be remanded for the inclusion of this application and any other necessary documentation into the record of proceeding.

Furthermore, the director should have withdrawn the applicant's TPS status rather than to deny the application. Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), the director may withdraw the status of an alien granted TPS at any time if it is found that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status.

Additionally, the Federal Bureau of Investigation (FBI) fingerprint results report indicates that on October 7, 2001, in San Diego, California, the applicant was arrested for force/assault with a deadly weapon not firearm-great bodily injury. Although the FBI report shows that prosecution was declined, the actual final court disposition of this arrest was not furnished to establish that the applicant was, in fact, not convicted of this offense. It is noted that the director did not address this arrest in his request for evidence dated June 9, 2005, and in his notice of decision dated September 28, 2005. The case also will be remanded so that the director can request that the applicant submit the final court disposition of this arrest and of any other arrests.

The case is remanded to the director for consideration and discussion of all issues pertinent to this case. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 case is remanded to the director for further action consistent with the above.