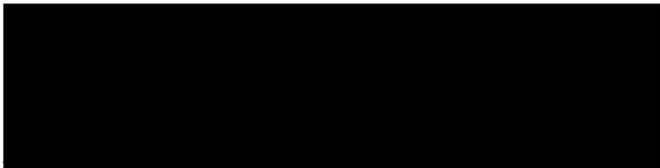


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**U.S. Citizenship
and Immigration
Services**



MI

FILE:

[SRC 99 244 52083]
[WAC 05 085 71330]

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 27 2008**

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:

SELF-REPRESENTED

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). A subsequent application for re-registration or renewal of temporary treatment benefits was denied by the Director, California Service Center (CSC), and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case will be remanded for further consideration and action.

The applicant is a 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, with the TSC on August 9, 1999, during the initial registration period (SRC 99 244 52083 relates). The TSC director denied the application on May 23, 2003, after determining that the applicant was ineligible for TPS because she had an active warrant from North Carolina for failure to appear on two counts of simple battery.

The applicant filed an application for re-registration or renewal of temporary treatment benefits with the CSC on December 23, 2004 (WAC 05 085 71330 relates). The CSC director denied the application on August 8, 2005, because the applicant's prior TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS or renewal.

In connection with her initial application, the applicant was required to appear for fingerprinting. As a result, CIS received a report from the Federal Bureau of Investigation (FBI) indicating that:

1. On July 30, 1998, the applicant was arrested and charged with one count of Unauthorized Use of a Motor Vehicle.
2. On July 30, 1998, the applicant was arrested and charged with one count of Injury to Personal Property.
3. On December 22, 2000, the applicant was arrested and charged with one count of Assault With a Deadly Weapon – Cutting.
4. There is an outstanding warrant, issued to the applicant in North Carolina, for failure to appear on two counts of Simple Battery.

Based on the information contained in the FBI report, the director of the TSC denied the initial Form I-821 on May 23, 2003.

Instructions regarding the usage of an FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, does not contain the court's charging documents and final dispositions for the applicant's arrests to establish that she was, in fact, convicted of the crimes listed in the FBI report. Nor is there evidence in the record that the applicant was requested to submit the final court dispositions of all her arrests. Therefore, the TSC director's denial of the initial application will be withdrawn, and the application will be remanded for a new decision.

Since the CSC director's denial of the application for re-registration or renewal of temporary treatment benefits is dependent upon the adjudication of the initial application, and the initial application is being remanded, the decision to deny the application for re-registration or renewal of temporary treatment benefits will also be remanded for further consideration and action.

The director may request any additional evidence he or she considers pertinent. Similarly, the applicant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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.