



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **APR 20 2007**
[WAC 05 089 76984]

IN RE: Applicant: [REDACTED]

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.

Cindy N. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further 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 record indicates that the applicant filed a TPS application during the initial registration period on February 3, 1999, with the U. S. Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] under receipt number WAC 99 124 53969. The District Director, Los Angeles, California, denied that application for "Lack of Prosecution" on December 6, 2000, because the applicant had failed to appear for a scheduled interview on August 23, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 21, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant states that all correspondence he received "claims that my I-821 was denied but I have never received notification that it was [denied] nor the reasons for denial."

A review of the record of proceeding indicates that on July 22, 2000, a notice was issued to the applicant informing him to appear at the CIS office on [REDACTED], on August 23, 2000, for an interview regarding his TPS application. The notice was mailed to the applicant's address at that time [REDACTED]. The applicant failed to appear; therefore, the application was denied on December 6, 2000, for lack of prosecution. The denial was in the form of a "Memorandum" to the file.

Regulations at 8 C.F.R. § 244.10(c) state, in part:

The decision of the director to deny Temporary Protected Status, a waiver of grounds of inadmissibility, or temporary treatment benefits shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial. Except as otherwise provided in this section, the alien shall be given written notice of his or her right to appeal a decision denying Temporary Protected Status.

Additionally, regulations at 8 C.F.R. § 103.2(b)(19) state, in part:

An applicant or petitioner shall be sent a written decision on his or her application, petition, motion, or appeal. Where the applicant or petitioner has authorized representation pursuant to § 103.2(a), that representative shall also be notified.

There is no evidence in the record to show that a copy of the "Memorandum" was issued to the applicant as required in 8 C.F.R. § 244.10(c) and 8 C.F.R. § 103.2(b)(19). Additionally, it is noted in the record that prior to the director's notice to appear for interview, the applicant submitted CIS forms, including Form I-131, Application for Travel Document, filed on April 10, 2000, listing his address as [REDACTED]

It is further noted that correspondence from the Los Angeles district [REDACTED]

director dated May 1, 2000, regarding the Form I-131, was mailed to the applicant's address in Pasadena, California.

Further, it is noted that on October 24, 2003, the applicant filed a motion to reopen his initial TPS application "on the grounds that I do not know why this case was denied." The record of proceeding contains a copy of the CSC director's decision dismissing the motion. However, this decision is undated and unsigned, and there is no evidence that this decision was sent to the applicant as required in 8 C.F.R. § 244.10(c) and 8 C.F.R. § 103.2(b)(19).

Additionally, the Federal Bureau of Investigation (FBI) fingerprint results report indicates that on June 7, 1991, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for the felony offense of "possess-purchase narcotic controlled substance for sale (cocaine)," and that he was subsequently convicted of this offense. The FBI report further indicates that at the time of his arrest, the applicant used the alias name of [REDACTED]" that he was born in Mexico, and is a citizen of Honduras. The actual final court disposition of this arrest, however, is not included in the record of proceeding.

Accordingly, the case will be remanded to enable the director to issue a proper Notice of Decision relating to the initial TPS application and give the applicant notice of his right to appeal the decision. The director should also request that the applicant submit the final court dispositions of all of his arrests, including his arrest listed in the FBI report. 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.