



U.S. Citizenship
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FILE:



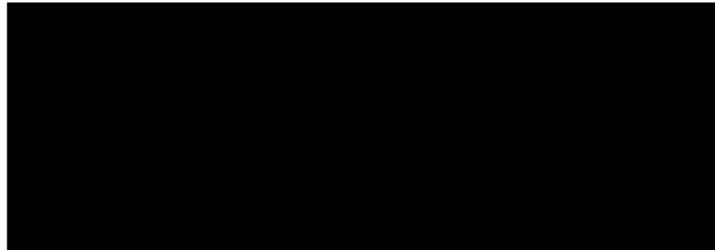
Office: California Service Center

Date: APR 30 2007

[SRC 99 247 53159 & WAC 05 078 79277]

IN RE:

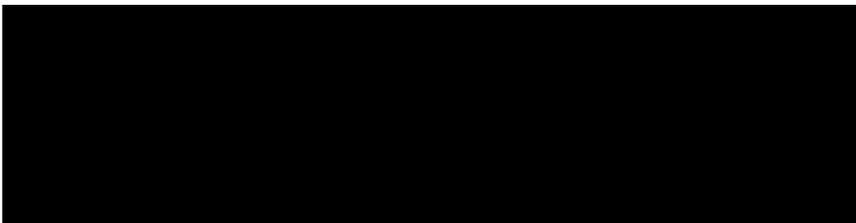
Applicant:



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DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 record reveals that the applicant filed an initial TPS application on August 16, 1999, under CIS receipt number SRC 99 247 53159. The Texas Service Center director approved that application on June 7, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 20, 2004, and indicated that she was re-registering for TPS.

The California Service Center director simultaneously withdrew the applicant's TPS and denied the re-registration application, on August 3, 2006.

The director noted that the applicant failed to submit evidence requested in an August 19, 2005, notice of intent to withdraw, for the final court dispositions of five arrests (detailed below). The director noted that the notice of intent to withdraw was mailed to the applicant's last known address and was not returned as undeliverable. The director, therefore, deemed the re-registration application abandoned. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The director, simultaneously, withdrew the applicant's temporary protected status as the applicant failed to comply with re-registration requirements for TPS. Since there was no appeal available for the re-registration application, the AAO will only consider the appeal of the director's decision to withdraw TPS.

On appeal, the applicant states that she forgot to notify USCIS of a change of her mailing address, and that she is submitting the requested court dispositions which establishes her innocence. However, the record does not reflect that counsel or the applicant have submitted any additional evidence. Therefore, the record must be considered complete.

The applicant alleged ineffective assistance of the applicant's prior representative, and states that her representative failed to notify CIS of the applicant's change of address, to the applicant's detriment. However, neither counsel, nor the applicant, submitted any of the required documentation to support an appeal based on ineffective assistance of counsel.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for inaction of the applicant's representative.

The director may withdraw the status of an alien granted temporary protected status under section 244 of the Act at any time if it is determined that "the alien was not in fact eligible for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

After a review of the record, the Chief, AAO, concurs with the director's withdrawal decision. As noted above, on August 19, 2005, the director notified the applicant of the intent to withdraw her temporary protected status because the record reflected that the applicant had five arrests, and the applicant was requested to provide final court dispositions for these arrests. The record reflects that the notice of intent to withdraw was mailed to the applicant's last known address and was not returned as undeliverable. Therefore, applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14.

As noted by the director, the applicant's Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant was:-

1. Arrested by the County Government – Div. Of Police, Lexington, Kentucky, on August 31, 2002, and charged with:
 - Charge 1 – Failure to Appear; Citation for Misdemeanor 2 431.015; and,
 - Charge 2 – Theft by Unlawful Taking - Shoplift.
2. Arrested by the Police Department Georgetown, Kentucky, on December 31, 2002, and charged with Charge 1 – Theft by Unlawful Taking.
3. Arrested by the County Government – Div. Of Police, Lexington, Kentucky, on February 22, 2003, and charged with:
 - Charge 1 – Burglary – 2nd Degree – Forced Entry – Residence; and,
 - Charge 2 – Kidnapping – Adult.
4. Arrested by the Police Department, Springdale, Ohio, on November 11, 2004, under the name [REDACTED], and charged with:
 - Charge 1 – Attempted Theft Misd.
5. Arrested by the Sheriff's Office, Indianapolis, Indiana, on February 7, 2004, under the name [REDACTED] and charged with:
 - Charge 1 – Theft; and,
 - Charge 2 – Public Intoxication.

It is also noted that the final court dispositions for these arrests are not in the record in the record of proceeding. CIS must address these arrests, and any court dispositions, in any future proceedings.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.