



U.S. Citizenship
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Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 14 2007

[WAC 05 060 75036]

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 California Service Center. 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 on appeal. The matter 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 record reveals that the applicant filed an initial application for TPS on September 26, 2002, under receipt number WAC 03 041 51725. The director denied that application on November 12, 2003, because the applicant failed to establish his eligibility for late initial registration. On December 11, 2003, the applicant filed an appeal from the denial decision.

On appeal, counsel for the applicant asserted that the applicant qualifies for late initial registration because he had a pending application for cancellation of removal and, subsequently, an appeal pending before the Board of Immigration Appeals (BIA), during the initial registration period for Hondurans. In support of the appeal, counsel submitted photocopies of documents already contained in the record of proceeding.

The record reveals that the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, on October 23, 1998. On July 21, 1999, an Asylum Officer in San Francisco, California, determined that the applicant had not established his eligibility for asylum and for withholding of removal and referred the applicant for a hearing before an Immigration Judge. On October 26, 1999, the applicant filed a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.

On June 21, 2002, in a hearing before an Immigration Judge in San Francisco, the applicant withdrew his applications for asylum and for withholding of removal. The Immigration Judge denied the application for cancellation of removal and granted the applicant the privilege of voluntary departure from the United States to Honduras on or before August 20, 2002, with an alternate order of removal if the applicant failed to comply with the grant of voluntary departure.

On July 22, 2002, the applicant filed an appeal from the order of the Immigration Judge with the BIA. CIS records indicate that the BIA dismissed the appeal on November 13, 2003, and issued a final order of removal.

The evidence of record confirms that the applicant had pending applications for asylum, withholding of removal, and cancellation of removal, during the initial registration period for Hondurans. When the applicant filed his Form I-821, Application for Temporary Protected Status, on September 26, 2002, his appeal from the order of the Immigration Judge was still pending before the BIA. Therefore, the applicant qualifies for late initial registration as described at 8 C.F.R. § 244.2(f)(2)(ii), and the sole ground for denial of the applicant's initial application has been overcome.

However, the record also reveals that the applicant was arrested in San Jose, California, on December 10, 1999, and charged with inflicting corporal injury on a spouse or co-habitant in violation of section 273.5 PC, a felony. Although counsel has stated that no charges were ever filed in connection with this arrest, the applicant has not provided any official court documents reflecting the final court disposition of this arrest.

In view of the foregoing, the Chief of the AAO has remanded the applicant's initial application for further consideration and action.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on November 29, 2004, and indicated that he was re-registering for TPS. The director denied the application on July 23, 2005, because the applicant's initial application had been denied and he was not eligible for re-registration for TPS.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The director's denial of the application for re-registration is dependent upon the adjudication of the initial application. Since the initial application has been remanded, the denial of the re-registration application will also be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Hondurans.

It is noted that [REDACTED] a United States citizen, filed a Form I-130, Petition for Alien Relative, on the applicant's behalf seeking to classify him as the spouse of a United States citizen. The petition was approved on September 10, 2003; however, the record contains a final divorce decree from the County Court at Law, Hidalgo, Texas, indicating that the applicant and [REDACTED] were divorced on January 21, 2003. There is no indication in the record that the applicant ever filed a Form I-485, Application for Adjustment of Status to Permanent Residence, with CIS.

ORDER: The matter is remanded for further action consistent with the above and entry of a new decision.