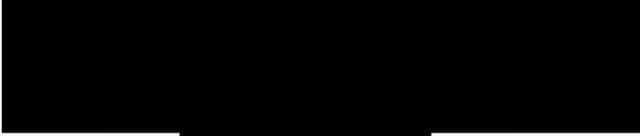


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invasion of personal privacy**



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

PUBLIC COPY



FILE: [REDACTED]
[WAC 05 096 84557]

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 22 2008**

INRE: 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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (AAO) on appeal. The appeal will be sustained and the application will be approved.

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 V.S.c. § 1254.

The record reveals that the applicant filed a TPS application during the initial registration period under Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) receipt number SRC 99 12954140. The Director, Texas Service Center (TSC), denied that application due to abandonment on March 13, 2000, after determining that the applicant had failed to respond to a request for additional evidence to establish that he had not been convicted of a felony or two or more misdemeanors relating to his criminal record. A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15). The director's denial letter incorrectly informed the applicant that he could appeal the denial due to abandonment. The applicant did not file an appeal from the denial decision.

Prior to the denial of his initial TPS application, the applicant had notified INS that he resided at a new address when he appeared for fingerprinting at an Application Support Center (ASC) on June 8, 1999, and when he made a written inquiry dated November 7, 1999, regarding his employment authorization document (EAD). CIS records also reflect that an address change was registered on December 2, 1999. Nevertheless, the denial letter reflects that it was mailed to the applicant's prior address. The request for additional evidence does not indicate the address to which it was mailed. The applicant had provided a more recent address, yet the denial letter was mailed to the prior address. Therefore, the denial due to abandonment was made in error; the decision shall be withdrawn and the initial application shall be considered as still pending.

Further, the applicant continued to file TPS applications marked as applications for re-registration in 2000, 2001, 2002, 2003, and 2004. In response to the TSC director's denial of employment authorization dated June 5, 2003, the applicant submitted documentation, without fee, relevant to his eligibility for TPS. Although denial of employment authorization cannot be appealed, the materials submitted contain the certified court dispositions reflecting that the February 26, 1996, misdemeanor charges against the applicant were dismissed for lack of prosecution on June 10, 1996. Therefore, the TSC director's conclusion that the applicant had been convicted of two misdemeanor charges was incorrect.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on January 4, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant filed the current appeal from that decision on August 2, 2005. The applicant subsequently submitted additional documentation in July and October 2007, showing that the criminal charges against him had been dismissed.

As noted above, the denial of the initial TPS application was made in error, as the notice was mailed to an incorrect address. Therefore, the applicant is still eligible to re-register for extension of TPS benefits, and the sole reason for denial stated by the ESC Director has been overcome.

The evidence of record reflects that the applicant has submitted evidence to overcome the grounds for the denial of his initial TPS application and re-registration application(s). The applicant has otherwise submitted evidence of his nationality, his continuous residence, and his continuous physical presence in the United States, and has established that he has met the requirements described in 8 C.F.R. §§ 244.2(a), (b) and (c). Therefore, the director's decision will be withdrawn, the appeal sustained, and the application will be approved.

An alien applying for TPS 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 met this burden.

ORDER: The appeal is sustained and the application is approved.