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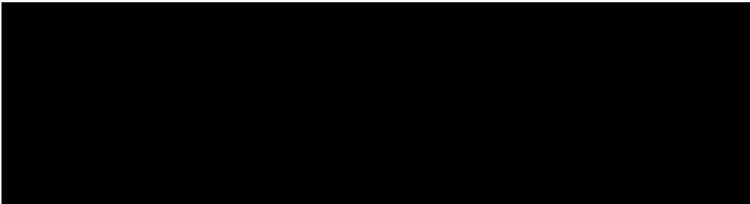
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date:

JAN 30 2008

[WAC 05 083 70761]

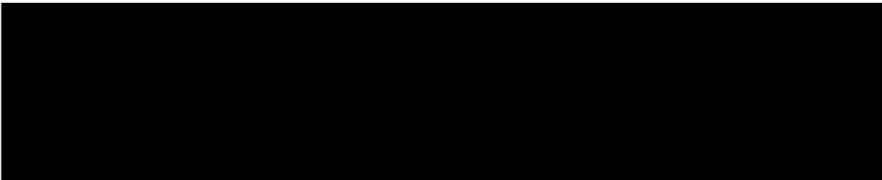
IN RE:

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 initial application was denied by the Director, Texas Service Center. A subsequent application for re-registration was also denied by the Director, California Service Center, 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. The appeal will be sustained and the applications will be approved.

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 January 20, 1999, under CIS receipt number SRC 99 113 51368. The Director, Texas Service Center, denied that application due to abandonment, on February 1, 2000, because the applicant failed to respond, within 12 weeks, to a request for evidence. In the director's request for evidence, the director noted that the applicant had been in removal proceedings, and therefore, the applicant was requested to submit a Form I-601, Application for Waiver of Grounds of Excludability. 8 C.F.R. § 103.2(b)(13). 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. As the applicant failed to submit the requested evidence, the director deemed that application abandoned. The record reflects that the applicant filed a late motion to reopen/reconsider by letter, in December 2004. The record does not reflect a decision on that motion.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 22, 2005, under CIS receipt number WAC 05 083 70761, and indicated that she was re-registering for TPS. The Director, California Service Center, 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.

On appeal, counsel reasserts the applicant's eligibility for TPS, and states that the applicant did not submit the response to the director's request for evidence because she did not understand the director's request. With the appeal, counsel submits various additional documents in an attempt to establish the applicant's continuous residence and her continuous physical presence in the United States.

As noted by the Texas Service Center director, the applicant failed to submit a Form I-601, Application for Waiver of Grounds of Excludability Waiver, as requested. However, the Form I-601 waiver application is not required in this case. It is noted that although the applicant was apprehended on entry on November 21, 1997, and was placed in removal proceedings (under [REDACTED] before an immigration judge; the record reflects that the immigration judge terminated the removal proceedings on February 2, 1999, and noted that the applicant was eligible for TPS.

The record contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS: the record contains sufficient evidence to establish the applicant's identity and nationality, her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States from January 5, 1999, to the date of filing her application, January 20, 1999. The record of proceedings contains a copy of the applicant's birth certificate with an English translation, and a copy of the biographic page of the applicant's Honduran passport. The record contains documentation, including employment and tax records, which cumulatively establishes the requisite continuous residence and continuous physical presence. Therefore, the director's decision will be withdrawn, and the initial application will be approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.