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FILE: [REDACTED] Office: California Service Center Date: MAR 10 2008  
[WAC 0509873351  
As it relates to SRC 99 115 50505]

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: SELF-REPRESENTED

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The initial application was denied by the Director, Miami District Office. 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 99 115 50505. The Director, Miami District Office, denied that application due to abandonment, on November 14, 2001, because the applicant submitted some, but not all, of the evidence requested in a January 22, 2001, notice of request for additional information. The director, therefore, deemed the 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 record does not reflect that the applicant filed a motion to reopen.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on January 6, 2005, under CIS receipt number WAC 05 098 73351, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application, on December 5, 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, the applicant states that he has provided all documents requested, and he is eligible for TPS as he has been in the United States since 1991. With his appeal, the applicant submits various additional documents, including a final court disposition of an arrest on July 15, 1995, which indicates that the case was dismissed for lack of prosecution.

It is noted that the Miami District Office director erred in denying the initial application for abandonment because, as noted by the director, the applicant submitted some, though not all, of the evidence requested in a requested.

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, and the applicant's continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States from January 5, 1999, to the date of filing his application, January 20, 1999. The record of proceedings contains a copy of the applicant's birth certificate, with 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 petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner 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.