

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M₁

FILE:

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 06 2009

[EAC 09 092 73602]

[EAC 09 111 51072- MOTION]

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

 Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for re-registration for Temporary Protected Status (TPS) was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen is approved and the case will be remanded to the Director, Vermont Service Center, for further consideration and action.

The applicant is a native and citizen of Honduras who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reflects that the applicant filed a timely TPS application under receipt number SRC 99 189 50149 that was approved by the Director, Texas Service Center. Upon review of a felony charge in the applicant's criminal history, the director issued a Notice of Intent to Deny, requesting that the applicant submit the final court documentation regarding his arrest on August 11, 1999 by the Collier County Sheriff's Office, and charges of "Cruelty Toward Child-Abuse," Statute/Ordinance FL827-03, a felony. The applicant did not furnish the requested documentation; therefore, the director concluded that the applicant had abandoned his application and incorrectly denied the TPS application on November 18, 2000, instead of withdrawing the applicant's Temporary Protected Status.

Pursuant to 8 C.F.R. § 244.14(a)(1), the director may withdraw the status of an alien granted TPS at any time if the alien was not in fact eligible at the time such status was granted, or at any time the alien thereafter becomes ineligible for such status. The director may also withdraw TPS for the applicant's failure to maintain continuous physical presence, and for failure without good cause to register annually within 30 days before the end of each 12-month period after the granting of TPS. 8 C.F.R. § 244.14(a)(2) and (3).

On February 12, 2004, the applicant filed an appeal with the AAO on a subsequently denied re-registration application. The AAO determined that the applicant had failed to submit the requested final disposition for the felony charge to establish that he was, in fact, eligible for TPS at the time it was granted and properly withdrew approval of the initial application since it had been improperly denied by the director.¹

The applicant subsequently filed an appeal with the AAO on the denial of a TPS re-registration application filed under WAC 05 110 70576. The AAO correctly dismissed the appeal **in part** because the applicant was not eligible for TPS re-registration as his previous TPS status had been withdrawn. With the appeal, counsel submitted evidence that the felony charge against the applicant had not been prosecuted due to insufficient grounds, which was acknowledged by the AAO in its decision. However, with the appeal, counsel also included judgment and conviction documents which contained the name and date of birth for another individual. The AAO failed to see that this documentation did not pertain to the applicant and determined that the applicant had been found guilty of three misdemeanors. A check of the applicant's FBI Fingerprint Results Report does not reflect that the applicant was convicted of a misdemeanor on June 8, 2004 or two misdemeanors on September 28, 2005. Therefore, the AAO withdraws this portion of its April 3, 2007 decision.

¹ The record reflects that on October 11, 2007, USCIS incorrectly granted approval for a re-registration application filed under receipt number EAC 07 305 73701 and improperly issued an A12 employment authorization card. There was no basis for re-registration approval since the applicant's initial TPS application has been withdrawn.

The record does not contain final court dispositions for the applicant's February 25, 2000 arrest in Collier County, Florida for petty larceny, a misdemeanor, or his arrest on March 31, 2000 by the Collier County Sheriff's Office for failure to appear on the petty theft charge, a second misdemeanor.

Accordingly, the case is remanded for the purpose of providing the applicant with an opportunity to submit final court dispositions for the February 25, 2000 and March 31, 2000 arrests. Thereafter, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.