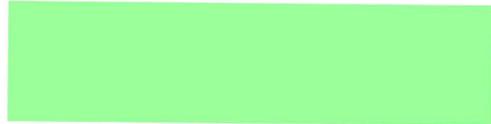


(b)(6)



U.S. Citizenship
and Immigration
Services



DATE:

Office: VERMONT SERVICE CENTER

FILE:

JUL 07 2014

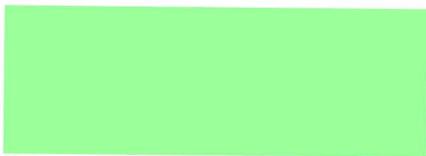
IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The order dismissing the appeal will be withdrawn. The case will be remanded for further action and consideration.

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. On April 4, 2011, the director withdrew TPS because it was determined that the applicant had failed to maintain continuous physical presence in the United States due to a deportation on July 21, 2005. The AAO summarily dismissed the appeal on March 16, 2012 as the applicant had failed to provide any evidence to overcome the director's finding and had failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel asserts that it is his belief that USCIS has confused the applicant's records with those of another individual with a variation of the same name as the applicant, that he "has never been to Texas and was not deported from [REDACTED] Texas on July 21, 2005." Counsel states that the applicant "was continuously employed" by [REDACTED] located in [REDACTED] in 2005; that during his employment, he was never absent or late; and that it would be physically impossible for the applicant to be in [REDACTED] Texas and be deported in 2005 if he was working without absences at his place of employment in California. Counsel submits:

- A statement dated July 18, 2012, from [REDACTED], partner of [REDACTED], California, who indicates that in 2005, the applicant was in his employ "for multiple years" with a perfect attendance record.
- A wage and tax statement (Form W-2) addressed to the applicant from [REDACTED] for 2005.
- Copies of the applicant's birth certificate (with English translation) and national identity card.

Counsel asserts that the applicant's identity documents list his given name as [REDACTED] and [REDACTED] however, USCIS records list the applicant's name as [REDACTED]. Counsel states that it is unclear how this error came about, but "the fact remains that the applicant was not deported from [REDACTED] Texas on July 21, 2005."

The record reflects that the name on the initial TPS application filed on August 8, 2002, is listed as [REDACTED] and all subsequent TPS and employment applications (2005-2010) list [REDACTED] as the applicant's name. No plausible explanation has

been provided why this matter was not brought to the attention of USCIS as the applicant continued to obtain employment authorization under the name [REDACTED] through July 2010. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It must be noted that the applicant submitted a copy of a California driver's license (issued in 2010), which lists his name as [REDACTED].

Nevertheless, the case will be remanded to the director in order for the applicant to be scheduled for new fingerprints (using Form FD-249) and then a thorough review of the record shall be conducted to either confirm or deny if the instant case and the 2005 deportation relate to the same individual.

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 motion is granted. The previous decision of the AAO dated March 16, 2012 is withdrawn. The case is remanded for further action.