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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 13 2007
[WAC 05 144 70002]

IN RE: 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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

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 U.S.C. § 1254.

The record reveals that the applicant filed a TPS application during the initial registration period on February 18, 1999, under Citizenship and Immigration Services (CIS) receipt number WAC 99 122 52127. The District Director, Los Angeles, California, denied that application for "Lack of Prosecution" on July 26, 2001, because the applicant had failed to appear for a scheduled interview on July 10, 2001.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 21, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application 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 asserts that he has not received any denial notice regarding the initial application from CIS. A review of the record of proceeding indicates that on June 21, 2001, a notice was issued to the applicant informing him to appear at the CIS office on [REDACTED] California, on July 10, 2001, for an interview regarding his TPS application. The notice was mailed to the applicant's most recent address at that time ([REDACTED]). The applicant failed to appear; therefore, the application was denied on July 26, 2001, for lack of prosecution. The denial was in the form of a "Memorandum" to the file. There is no evidence in the record to show that a copy of the memorandum was issued to the applicant.

Regulations at 8 C.F.R. § 244.10(c) states, in part:

The decision of the director to deny Temporary Protected Status, a waiver of grounds of inadmissibility, or temporary treatment benefits shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial. Except as otherwise provided in this section, the alien shall be given written notice of his or her right to appeal a decision denying Temporary Protected Status.

Additionally, regulations at 8 C.F.R. § 103.2(b)(19) states, in part:

An applicant or petitioner shall be sent a written decision on his or her application, petition, motion, or appeal. Where the applicant or petitioner has authorized representation pursuant to § 103.2(a), that representative shall also be notified.

Accordingly, the case will be remanded so that the director could issue a Notice of Decision relating to the initial TPS application and give the applicant notice of his right to appeal the decision or to file a motion to reopen. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 consistent with the above discussion and entry of a new decision.