



U.S. Citizenship
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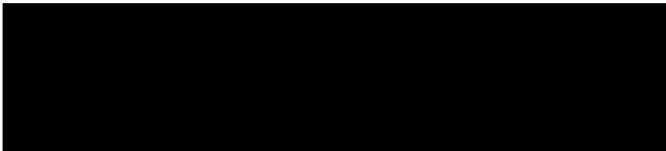
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FILE: [REDACTED] Office: California Service Center Date: **JUL 05 2007**
[WAC 05 110 70140 as it relates to SRC 99 194 53095]

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:



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 applicant's temporary protected status was denied by the Director, Texas Service Center. A subsequent application for re-registration was 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, and the case will be remanded for further consideration and 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 reflects that the applicant's initial TPS application was filed on June 4, 1999, under CIS receipt file number SRC 99 194 53095. On November 14, 2003, the Texas Service Center director denied that application due to abandonment because the applicant failed to respond, within 12 weeks, to an August 5, 2003, request for evidence to submit evidence of her continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, to the date of filing her application. The director noted that the request for evidence was mailed to the applicant's last known address, and was returned as undeliverable. 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/reconsider.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 18, 2005, under CIS receipt number WAC 05 110 70140, and indicated that she was re-registering for TPS. The California Service Center director denied the 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.

The AAO notes that the record contains a request for evidence, dated August 5, 2003, which was mailed to a different address than the director's denial notice, dated October 14, 2003; however, the address on the denial notice was not the applicant's address of record as of the date of mailing (as evidenced by the applicant's TPS extension applications). Instead, the denial notice was mailed to the applicant's address as indicated on her initial TPS application. There is an inference that the applicant did not receive the notice of director's denial notice. Without evidence that the applicant received the denial notice, there is no basis to determine whether the applicant failed to comply with the director's appeal instructions.

The director's denial of the initial application will be withdrawn; the application will be remanded, and the director shall re-issue the request for evidence to afford the applicant an opportunity to submit the evidence to establish her eligibility for TPS. 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 remanded, that decision will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Hondurans.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.