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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[redacted]

File: [redacted] Office: Texas Service Center Date: **JAN 02 03**

IN RE: Applicant: [redacted]

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

IN BEHALF OF APPLICANT: Self-represented

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The Director's decision will be withdrawn, and the case will be remanded.

The applicant is a native and citizen of Honduras who indicated on his application that he entered the United States on August 17, 1997, without a lawful admission or parole.

In her decision, the director stated in part:

> A review of the Service records, as well as documents submitted with your application, show that you had an application for adjustment of status pending during the initial registration period of January 5, 1999 to August 20, 1999. However, because you did not apply during the initial registration, you must now wait until a decision is made on your pending application. Once a decision is made, you will have **60 days** from the date of the decision to apply for Temporary Protected Status as a late initial registrant.

The record does not contain any evidence to support the director's statement that the applicant had an application for adjustment of status pending during the initial registration period. Further, the director has interpreted the regulations incorrectly. There is no regulatory authority requiring the applicant to wait until a decision is made on his pending application before applying for late registration.

The regulation in 8 C.F.R. 244.2(f)(2) provides in part that an applicant may apply for Temporary Protected Status during any subsequent extension of such designation if **at the time of the initial registration period**:

> (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;...
>
> (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

(Emphasis added).

Under the regulation, if the application for adjustment of status was pending during the initial registration period, and remains pending when the applicant applies for for Temporary Protected Status, the applicant remains eligible for late registration. If an application for adjustment of status was pending during the

initial registration period and said application was subsequently denied, the applicant would have a 60 day period from the denial of that application to file an application for late registration.

There is no evidence of record indicating that the applicant had an adjustment of status application pending at the time of the initial registration period, or at the time he filed for Temporary Protected Status. The decision of the director will be withdrawn, and the case will be remanded for inclusion of such evidence in the record, and for the entry of a new decision in accordance with the foregoing.

ORDER: The decision of the director is withdrawn. The case is remanded for the entry of a new decision, which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.