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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: California Service Center

Date: APR 16 2004

IN RE: Applicant [Redacted]

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

ON BEHALF OF PETITIONER: 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 for
Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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 The decision of the director will be withdrawn and the case will be remanded.

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 director determined that the applicant failed to establish that he filed a completed application, with proper fee during the initial registration period from January 5, 1999 to August 20, 1999. The director also found that the applicant filed his application on July 26, 2002. Furthermore, the director determined that the applicant failed to establish that he met the qualification for late initial registration

On appeal, the applicant states that he filed his TPS application in a timely manner.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (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;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (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.

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On November 6, 2002, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his residence in the United States since December 30, 1998, and his physical presence in the United States from January 5, 1999. The applicant, in response, provided evidence of his residence and physical presence in the United States. He did not present evidence of his eligibility for late registration. The director therefore denied the application.

On appeal, the applicant claims that he filed his application during the initial registration period. According to the applicant he initially submitted his application on August 18, 1999, but it was returned by CIS because he did not

sign the "signature card" supplied as an attachment for the Employment Authorization Document (EAD). CIS records show that the corrected application was received on September 9, 1999, which is after the initial registration period ended.

As pointed out by the director, and as stated above in 8 C.F.R. § 244.2(f)(1) an applicant is eligible for TPS if he **registers** for TPS during the initial registration period announced by public notice in the *Federal Register*... According to 8 C.F.R. § 244.1 "**register**" means to "**properly file**" a completed application, with proper fee, for Temporary Protected Status during the registration period designated under 244(b) of the Act. However, according to 8 C.F.R. § 103.2(a)(7), "**properly filed**" means:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204, part 245 or part 245a of this chapter, shall be regarded as **properly filed** when so stamped, if it is signed and executed and the required filing fee is attached or waiver of the filing fee is granted failed to submit a completed application during the initial registration period.

The director stated that the applicant's failure to sign the "signature card" for the EAD means that he did not properly file his application until after the initial registration period. Yet, as shown above, there is no such requirement that failure to sign the "signature card" would prohibit the application from being considered as properly filed. The record supports the applicant's claim that his application was actually received by CIS, on August 19, 1999, prior to the end of the initial registration period, except for the added stipulation on the unsigned "signature card". Therefore, the applicant's TPS application was actually properly filed on August 19, 1999.

However, there is no evidence in the record that the applicant maintained continuous residence and physical presence in the United States from 2000 to 2002.

Therefore, the decision of the director will be withdrawn and the case will be remanded. The director shall fully adjudicate the application. 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 director's decision is withdrawn. The case is remanded for further action.