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**U.S. Citizenship and Immigration Services**



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FILE:



Office: VERMONT SERVICE CENTER

Date:

2/27/04

IN RE:

Applicant:



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.

*for*  
  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The initial application for Temporary Protected Status (TPS) was denied on November 7, 2000, by the Director, Vermont Service Center. A subsequent motion to reopen was denied on September 19, 2001. The applicant re-filed for TPS on June 7, 2003. On November 3, 2003, the application was denied by the acting director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, the applicant provides a statement.

As stated in 8 C.F.R. § 244.1. "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period. The director denied that application on November 7, 2000, for abandonment. The director advised the applicant that a denial due to abandonment may not be appealed. The director also advised that the applicant could file a motion to reopen a petition or application denied due to abandonment with evidence that the decision was in error because:

1. The requested evidence was not material to the issue of eligibility;
2. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
3. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The applicant was given until December 10, 2000 to file a motion. The applicant filed a motion to reopen or reconsider on May 10, 2001, five months after the allotted timeframe.

The director, in a decision dated September 19, 2001, denied the motion to reopen, as it was not submitted within the required 33 days.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status on June 7, 2003. The acting director denied this second application because it was filed outside of the initial registration period, and the applicant had failed to establish his eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish

eligibility for late registration, the director's decision did not sufficiently explain the entire basis for the denial.

The applicant's initial Form I-821 was properly filed. That initial application was denied by the director on November 7, 2000. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on June 7, 2003. Since the initial application was denied on November 7, 2000, the subsequent application cannot be considered as re-registration. Therefore, this application can only be considered as late registration.

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 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.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, 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.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, 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.

The issue raised by the acting director to be addressed in this proceeding is whether the applicant is eligible for late registration.

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. The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The

record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 2, 1999. The initial application was denied for abandonment on November 7, 2000. The applicant re-filed his application for TPS on June 7, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he 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).

The record of proceedings confirms that the applicant re-filed his TPS application after the initial registration period had closed. In a notice of intent to deny, dated August 11, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The acting director found that the applicant had not provided any evidence to establish that he met any of the qualifying criteria for late registration. The acting director denied the application on November 3, 2003.

On appeal, the applicant, in a letter dated November 24, 2003, states, in pertinent part, the following:

I am enclosing documents to show that I applied the first time The [sic] TPS was approved and to this effect I am submitting copies of all the I-797 that I received from the INS department. You will see that I have continuously filed year after year although I only received the first permit. Thereafter or during this time I was required to send evidence in order prove that I had already established a residence in the USA from [sic] since 1998 and thereafter. I provided such evidence in detail and I understand that the evidence was accepted. In addition to this I also continue to applied [sic] year after year while my case was pending.

In addition to this I am enclosing the approval notices from my daughters which were approved when the initial TPS was granted and whom [sic] I also believe that may qualify me for the Late [sic] initial registration should you find that I did not submit my documents as I have indicated above.

The applicant submits: a copy of his daughter's birth certificate; copies of his daughter's children's birth certificates and Social Security cards; a copy of Form I-797, Notice of Action, belonging to [REDACTED] which indicates that she has been granted TPS; a copy of a Social Security card and identification card belonging to [REDACTED] an earnings statement, dated June 30, 2001, belonging to [REDACTED] a copy of the biographical page of his Honduran passport; a copy of Form I-94, Record of Departure; numerous copies of Form I-797C addressed to the applicant advising of the receipt of his Form I-765, Employment Authorization Document; numerous copies of cancelled checks addressed to the Bureau of Citizenship; a copy of the Service's

FD-258, Finger Print Receipt Notification; and, several copies of cancelled checks addressed to the Immigration and Naturalization Service.

None of the documentation submitted on appeal is sufficient in demonstrating the applicant's eligibility for late registration. Consequently, the applicant has not established that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The acting director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the acting director, the applicant has provided insufficient evidence to demonstrate the he has continuously resided in the United States since December 30, 1998, and that he has been continuously physically present in the United States since January 5, 1999. The majority of the documentation contained in the record addresses time periods prior to or more than a year after the qualifying timeframes. Therefore, the application must also be denied for these reasons.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.