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SEP 14 2004

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER Date:

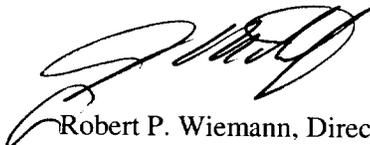
IN RE: Applicant: [Redacted]

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, Director
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 appeal will be dismissed.

The applicant is a native and citizen of Honduras who is applying for Temporary Protected Status (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 that he was eligible for late registration.

On appeal, the applicant submits a statement and additional evidence.

The record reveals that the applicant did file an initial application for TPS during the initial registration period. That application was denied on December 5, 2000, for failure to respond to a request for evidence to establish his eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on June 21, 2001, almost two years after the expiration of the initial registration period for Hondurans. The director denied this second application because it was filed outside of the initial registration period and because 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 denial.

The applicant's initial Form I-821 was properly filed on March 1, 1999. That initial application was denied by the director on December 5, 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 21, 2001. Since the initial application was denied on December 5, 2000, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

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 application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 21, 2001.

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 or 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On October 23, 2002, 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 record does not contain a response from the applicant.

The director denied the application on November 13, 2003, after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

On December 16, 2003, the applicant filed a motion to reopen. The applicant stated that he did not respond to the director's request for additional evidence because he never received the notice. The applicant stated that both the request for additional evidence and the Notice of Decision were sent to the wrong address. A review of the record reveals that both notices were mailed to the applicant at [REDACTED] North Hollywood, CA 91605." The applicant's correct address at the time was [REDACTED] North Hollywood, CA 91605."

The director reopened the matter and issued a new Notice of Intent to Deny on January 14, 2004, requesting evidence to establish the applicant's eligibility for late registration; evidence to establish the applicant's continuous residence in the United States since December 30, 1998 and continuous physical presence in the United States since January 5, 1999; and, a certified copy of the final court disposition of the applicant's arrest on December 15, 2000, by police officers in Los Angeles, California, on the charge "HIT AND RUN, PROP DAMAGE."

The applicant's response to the notice was received at the California Service Center on February 13, 2004. The applicant submitted the following evidence:

1. a Form I-797C notice acknowledging receipt of a Form I-821, Application for Temporary Protected Status, at the California Service Center on July 10, 2001 (receipt number WAC 01 244 57963, CIS registration number [REDACTED])
2. a printout of an online inquiry regarding a Form I-821, CIS receipt number WAC 01 244 57963, indicating that that CIS received the applicant's response to a request for additional evidence on February 20, 2004, and stating that it is taking between 480 and 510 days for most applications of this type;
3. a Form I-797C notice acknowledging receipt of a Form I-821 at the California Service Center on January 20, 1999 (receipt number [REDACTED] CIS registration number [REDACTED])

4. a form letter dated January 28, 2004, from the Super Court of California, County of Los Angeles, Los Angeles, California, stating that there is no case in that office under the name [REDACTED], date of birth March 12, 1976; and,
5. photocopies of various documents previous submitted in an attempt to establish the applicant's qualifying continuous residence and continuous physical presence in the United States.

The director denied the application on March 4, 2004, because the applicant failed to establish his eligibility for late initial registration.

On appeal, the applicant states that he has sent all the documents requested by CIS, and he does not understand why his application has been denied. He submits photocopies of the evidence previously provided in response to the Notice of Intent to Deny dated January 14, 2004.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States; however, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the applicant still has not provided the final court disposition of his criminal charge. Therefore, the application also must be denied for this reason. It is further noted that the applicant was apprehended by the United States Border Patrol near McAllen, Texas, on December 12, 1996, and placed in deportation proceedings under CIS identification number [REDACTED]. There is no indication in the record as to whether a deportation hearing before an Immigration Judge ever took place.

An alien applying for temporary protected status 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.