

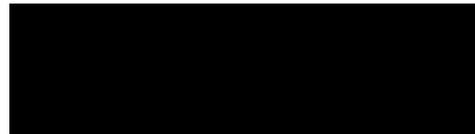
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U.S. Citizenship
and Immigration
Services



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FILE:



Office: VERMONT SERVICE CENTER

Date: DEC 17 2004

IN RE:

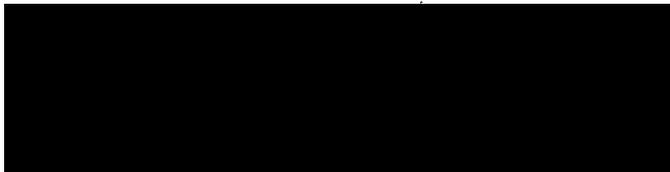
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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, counsel for the applicant submits a brief statement and additional documentation.

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 a Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on June 6, 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 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 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 June 30, 2003, the director requested the applicant to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted documentation relating to his residence and physical presence.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 8, 2003.

On appeal, counsel for the applicant asserts that the applicant is eligible for late registration because a Form I-140, Immigrant Petition for Alien Worker, was filed on his behalf by his prospective employer, [REDACTED].

The record of proceeding reflects that an application for labor certification was filed on the applicant's behalf by [REDACTED] Brooklyn, New York, on October 24, 1995. That application was certified by the U.S. Department of Labor (DOL) on December 2, 1998. On December 21, 1998, [REDACTED] submitted a Form I-140, Immigrant Petition for Alien Worker, on the applicant's behalf. The Form I-140 was denied by the Immigration and Naturalization Service (now CIS) on July 30, 1999. On August 30, 1999, [REDACTED] through counsel, filed an appeal of that decision. The appeal was dismissed by the AAO on May 2, 2001. In response to a subsequently filed motion to reopen and reconsider, the AAO affirmed the decision to deny the application on March 11, 2002.

It appears that counsel is implying that the applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) because he had an application for labor certification and an immigrant petition for alien worker filed on his behalf by [REDACTED]. Counsel's implication is not persuasive.

To qualify for late registration, the applicant must provide evidence that he was eligible for late registration during the initial registration period. The fact that an individual has had an application or petition filed on his behalf does not, in itself, qualify that individual for late registration under 8 C.F.R. § 244.2(f)(2). There is no evidence that the applicant had an application for application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal that was pending, or subject to further review, during the initial registration period. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.