

U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

M

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date:

JUL 02 2004

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 for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further consideration and action. The director shall issue a decision on a second Form I-821, Application for Temporary Protected Status, filed by the applicant.

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 denied the application for TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he was eligible for late registration.

On appeal, the applicant states that he has responded to all requests for evidence since the time his initial TPS application was submitted. The applicant submits additional evidence.

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 on May 12, 1999, during the initial registration period. That application was denied on October 30, 2000 because the applicant had two misdemeanor convictions. Pursuant to section 244(c)(2)(B)(i) and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. The applicant did not file either a motion or an appeal during the requisite timeframe.

The applicant filed subsequent TPS applications on July 13, 2001 and June 17, 2002. It is noted that the decision on the TPS application filed on July 13, 2001 is not included in the record. The director denied the instant 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 her 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 May 12, 1999. That initial application was denied by the director on October 30, 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 subsequent Form(s) I-821 on July 13, 2001 and June 17, 2002. Since the initial application was denied on October 30, 2000, the subsequent applications cannot be considered as re-registrations. 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 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 condition described in paragraph (f)(2) of this section.

An alien is ineligible for Temporary Protected Status if the alien has been convicted of any felony or two or more misdemeanors committed in the United States. 8 C.F.R. § 244.4.

The term *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 term *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.

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 in the United States 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 time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reflects that the applicant filed his TPS application on June 17, 2002.

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 Citizenship and Immigration Services (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 September 5, 2002, the applicant was requested to submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. In response, the applicant requested that he be granted "the sixty-day period" described in 8 C.F.R. § 244.2(f)(2). He stated that he had submitted all required documentation on time. In addition, the applicant submitted: a copy of his Employment Authorization Document, valid for the period from August 26, 1999 through July 5, 2000; Form(s) I-797, Receipt Notice(s) dated May 12, 1999, July 5, 2000, July 14, 2001, and, June 17, 2002; and, additional evidence of his residence in the United States. The director determined that the applicant had failed to submit evidence to establish his eligibility for late registration. On November 7, 2002, the director, therefore, denied the application.

Aliens applying under the provisions for late initial registration must prove that they are eligible because during the initial registration period of January 5, 1999 through August 20, 1999, they fell within the provisions described in paragraph (f)(2) above.

On appeal, the applicant states that he has responded to all requests for evidence since the time his initial TPS application was submitted. The applicant submits additional evidence of his residence in the United States. The applicant requests that a waiver be granted in his case.

While it is noted that the applicant has requested that a waiver be granted in his case; the record does not contain a Form I-601, Waiver of Grounds of Inadmissibility. In addition, the decision on the TPS application filed on July 13, 2001 is not included in the record. Consequently, the case will be remanded. The director shall review all records pertaining to this applicant and issue a decision on the second Form I-821, Application for Temporary Protected Status, filed by the applicant. The director may request any evidence deemed necessary to assist him with the determination of the applicant's eligibility for TPS.

The burden of proof is upon the applicant to establish 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 case will be remanded to the director for further consideration and action, consistent with the above.