



U.S. Citizenship
and Immigration
Services

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U.S. CITIZENSHIP AND IMMIGRATION SERVICES
JUN 18 2011

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FILE:

[Redacted]

Office: Texas Service Center

Date:

JUN 18 2011

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:

[Redacted]

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.

Cindy M. Gomez
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 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 reasserts the applicant's claim of eligibility and asserts that the applicant "originally applied for TPS on March 5, 1999 [and] on or about 11/1/00 or 11/14/00 the TPS application was approved."

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 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.

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." Each application must include a completed Form I-821, Application for Temporary Protected Status, Form I-765, Application for Employment Authorization, two identification photographs and supporting evidence as provided in § 244.9. 8 C.F.R. § 244.6. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

The record reveals that the applicant submitted a Form I-821, Application for TPS, on March 5, 1999; however, this application was considered incomplete because it was not accompanied by a Form I-765 application as is required under 8 C.F.R. § 244.6. Therefore, the Form I-821 was rejected and was returned to the applicant on April 12, 1999, with instructions to resubmit the application with the required Form I-765. Although the incomplete application was returned to the applicant more than four months before the close of the initial registration period on August 20, 1999, the applicant did not return a completed application until July 3, 2000.

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 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 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 May 30, 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 applicant was also requested to submit final court dispositions for numerous arrests in the United States. The applicant, in response, provided documentation relating to his criminal record.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 17, 2002.

On appeal, counsel asserts that the applicant's initial application was filed on March 5, 1999. However, as detailed above, the applicant's March 5, 1999 attempt to apply for TPS was rejected because the application was incomplete. On appeal, counsel submitted a copy of the April 12, 1999, rejection notice; thus, acknowledging the applicant's receipt of the notice. While the applicant was given ample opportunity to return a completed application within the initial registration period, he failed to do so until July 3, 2000; nearly a year after the initial registration period had closed.

It is noted that counsel also asserts on appeal that the applicant was granted TPS in November 2000. However, a photocopy of the Employment Authorization Card submitted by the applicant reflects that the applicant was authorized to work while his July 3, 2000, application was pending adjudication and does not indicate that the applicant was previously granted TPS.

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 TPS on this ground will be affirmed.

Beyond the decision of the director, the record also reveals that the applicant has been convicted of at least three misdemeanor offenses in the United States. The applicant was found guilty and his liberty was restrained in that he was placed on probation. Therefore, the applicant has been "convicted" as defined in Section 101(a)(48)(A) of the Act. However, it appears that the director did not pursue a dismissal based on the applicant's criminal record because the applicant submitted evidence showing that at least one of his convictions had been "dismissed" after he completed his probation. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. Matter of Roldan, I.D. 3377 (BIA 1999). Therefore, the applicant remains convicted of at least three misdemeanor offenses and the appeal will also be dismissed due to the applicant's ineligibility under 8 C.F.R. § 244.4(a).

Furthermore, it is noted for the record that on October 13, 1998, in removal proceedings, the applicant was granted voluntary departure, without expense to the Government, on or before February 11, 1999. There is no information in the record to show that the applicant departed voluntarily from the United States as ordered.

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.