



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



M1

FILE:



Office: Nebraska Service Center

Date: **MAY 17 2004**

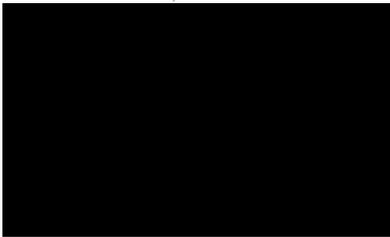
IN RE:

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 for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The matter is an application for Temporary Protected Status (TPS). The Director, Nebraska Service Center, recommended that the application be denied and certified the case to the Administrative Appeals Office (AAO) for review. The director's recommendation will be affirmed and the application will be denied.

The applicant is a native and citizen of Honduras who indicated on his application that he entered the United States in September 1994 without a lawful admission or parole. The director found that the applicant had failed to satisfy the requirements for late registration. The director recommended that the application be denied, and certified the decision for review.

The applicant has not challenged the director's recommendation nor has he submitted any additional evidence subsequent to the certification of his case.

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.

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 July 5, 2002.

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 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 December 23, 2002, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, counsel provided documentation relating to the applicant's first application for TPS, which was denied on February 8, 2000, when the Director, Nebraska Service Center, determined that the applicant had abandoned his claim. Counsel asserted that the applicant was eligible for late registration because his previous TPS application constituted "an application pending for relief from removal" during the initial registration period.

In his Notice of Certification dated February 7, 2003, the director concluded that "counsel is correct in his contention" that the applicant's initial (abandoned) application constituted eligibility for late registration. However, the director erred in his application of the regulation. While Temporary Protected Status may confer benefits that temporarily delay the alien's removal, the temporary benefits of Temporary Protected Status do not equate to "relief from removal" obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation.

Taking counsel's argument to its logical extreme, an alien who had abandoned his initial application could file a new application within 60 days after the denial for abandonment, abandon the new application, and perpetuate the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without even successfully completing the application process. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). Therefore, the director's conclusion that the applicant had met this requirement is withdrawn and the application will be denied based on the applicant's failure to establish his eligibility for late registration.

The director recommended that the application be denied because the applicant did not file his current application within 60 days of the denial of his initial application for Temporary Protected Status. 8 C.F.R. § 244.2(g). However, since the applicant has failed to satisfy the criteria for late registration described in 8 C.F.R. § 244.2(f)(2), the issue of the 60-day filing period is moot and need not be addressed.

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 director's recommendation to deny the application is affirmed and the application for temporary resident status is denied.