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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: DEC 14 2005

[EAC 03 255 53025]

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.

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 on appeal. The appeal will be dismissed.

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 because the applicant had failed to establish that he was eligible for late registration.

On appeal, counsel submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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.

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 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 July 5, 2006, 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 shows that the applicant filed his initial TPS application on September 12, 2003. The director erroneously listed the initial registration period for El Salvadorans from March 9, 2001 through September 9, 2002, rather than for Hondurans from January 9, 1999, through August 20, 1999.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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).

In a notice of intent to deny dated October 3, 2003, the director maintained that the initial registration period for filing for TPS for El Salvadorans was March 9, 2001, through September 9, 2002, but that the application was filed on September 12, 2003. The applicant was, therefore, requested 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 provided evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the requisite period.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on August 25, 2004.

On appeal, counsel asserts that obviously an administrative error was made by the director because the applicant is Honduran, not El Salvadoran, and that the initial registration period for Honduras was January 5, 1999 to

August 20, 1999. He further asserts that the applicant was in a valid nonimmigrant status at the time of the initial registration because he had and still has an application for political asylum pending, and also that the applicant has continuously resided in the United States even before December 30, 1999. To support his claim, counsel submits copies of Employment Authorization Cards (Category C08, pending asylum application), issued on November 4, 1997; November 4, 1998; November 4, 1999, and November 28, 2000.

The record shows that the applicant filed Form I-589, Request for Asylum in the United States, on September 17, 1993. The record contains a "Memorandum to File" indicating that the case was administratively closed on November 20, 1996, because the applicant failed to appear for the interview, and the unexcused failure of the applicant to appear for a scheduled interview may be presumed an abandonment of the application pursuant to 8 C.F.R. § 208.10. A Form I-140, Petition for Alien Worker, was filed on the applicant's behalf by the [REDACTED] on July 28, 1997. The Form I-140 was denied due to abandonment on October 20, 1998. On November 21, 2000, the asylum case was administratively reopened, and the applicant was requested to appear for an interview on January 23, 2001. The applicant failed to appear at the scheduled interview. In a letter dated January 17, 2001, received at the New York asylum office on January 30, 2001, the applicant's attorney advised that the applicant "wishes to withdraw his affirmative application for political asylum at this time. Therefore, please note that he will not be attending this interview." Based on this letter of withdrawal, the asylum application was closed on February 13, 2001.

As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the withdrawal of his asylum application to file an application for late registration in order to meet the requirements described in 8 C.F.R. § 244.2(f)(2)(ii). However, the TPS application was not filed until September 12, 2003. Accordingly, the applicant has failed 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 TPS application 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.