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

U.S. Citizenship and Immigration Services

M I

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: JUL 01 2005

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.

for 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 failed to establish he was eligible for late registration.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS and submits evidence in support of his claim.

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 during the initial registration period. That application was denied on June 2, 2000, due to abandonment. Counsel, on behalf of the applicant, filed a motion to reopen the director's decision on August 1, 2000. The director dismissed the motion to reopen on September 15, 2000, because the motion was not signed by the applicant, and counsel did not provide a properly filed Form G-28, Notice of Entry of Appearance as Attorney or Representative.

The applicant filed a second Form I-821, Application for Temporary Protected Status, on August 21, 2003. The director denied this application on February 25, 2004, 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 his 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 January 13, 1999. That initial application was denied by the director on June 2, 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 a subsequent Form I-821 on August 21, 2003. Since the initial application was denied on June 2, 2000, and the motion to reopen was dismissed, the subsequent application cannot be considered as a re-registration. 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 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 § 244.3;

(e) Is not ineligible under § 244.4; and

(f) (1) Registers for Temporary Protected Status 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 continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 9, 1999. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until July 5, 2006, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she 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 or she 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 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 25, 2003, 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 evidence establishing his continuous residence in the United States as of December 28, 1998, and his continuous physical presence in the United States from January 5, 1999 to the date of filing his application. In addition, the applicant

was requested to submit evidence to establish that he is a citizen or national of Honduras. In response, the applicant submitted copies of his Honduran passport, his Honduran birth certificate along with an English translation, and a single undated employment letter from General Manager of the Silver Diner in Rockville, Maryland. The applicant, however, did not submit any evidence to establish his eligibility for late registration. The director, therefore, determined that the applicant had failed to establish he was eligible for TPS late registration and denied the application on February 25, 2004.

On appeal, counsel, on behalf of the applicant, states that the Service erred in its conclusion that the applicant had not established his continuous residence and continuous physical presence in the United States since December 30, 1998. Counsel also states that the Service erred in concluding that the applicant does not qualify as he is from Honduras. Counsel also provides, on appeal, the following documentation: a copy of a the Service's Notice of Action dated November 2, 2000, requesting evidence in support of the applicant's application for employment authorization; an affidavit from the applicant regarding his continuous residence and physical presence in the United States; copies of the applicant's employment authorization and temporary protected status applications signed on January 7, 1999; copies of the applicant's Commonwealth of Virginia Identification Card; copies of the applicant's Honduran passport; copies of the applicant's earnings statements from the Silver Diner Development, Inc. dated September 11, 1998; March 5, 1999, April 30, 1999, and September 17, 1999; and copies of receipt notices from the Service.

Counsel, on appeal, provides evidence regarding the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods; however, neither the applicant, nor counsel, has submitted <u>any</u> evidence to establish that the applicant has met <u>any</u> of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

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.