

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

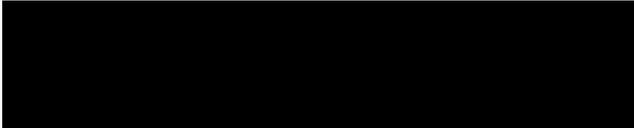
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI



FILE:

[REDACTED]
[SRC 00 275 53169]

Office: TEXAS SERVICE CENTER

Date:

JUN 07 2005

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: 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.

Linda 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 (AAO) on appeal. The case will be remanded to the director for further consideration and action.

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 after determining that the applicant had failed to establish that he was eligible for late initial registration.

On appeal, the applicant submits a statement and additional evidence. He also resubmits some documentation that had previously been entered into the record.

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. 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 reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 3, 2000.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

On December 30, 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 photo identification or a national identity document bearing a photograph and/or fingerprint. The applicant, in response, provided photocopies of the following documentation: the biographic page of his Honduran passport issued on June 18, 1999, by the Consulate General, Tampa, Florida; a 1995 Internal Revenue Service (IRS) Form 1040A, U.S. Individual Income Tax Return, signed as of "4-02-97;" the Employment Authorization document (EAD) for his wife, [REDACTED] under category A12, with validity from November 8, 2001 through July 5, 2002; his wife's Social Security Card; two church certificates dated August 9, 1998, and June 10, 1999; a medical enrollment packet for his child dated "2/16/99;" and, copies of his wife's Form I-765, Application for Employment Authorization, dated April 20, 1999, and a partial copy of her Form I-821, Application for Temporary Protected Status, on which she has listed the applicant as her spouse.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on January 28, 2004.

On appeal, the applicant states that he did not apply separately during the initial registration period because his wife had applied and had included him as her spouse on her application. He states that he did not understand English well, and, therefore, did not believe it was necessary to apply individually. The applicant states that he qualifies because he was married to a TPS applicant and was present in the United States prior to the initial registration period. In support of the appeal, the applicant submits additional evidence including photocopies of: a License and Certificate of Marriage, San Francisco, California, reflecting that the applicant and [REDACTED] of Honduras, were married on July 30, 1995, in San Francisco, California; San Francisco, California, birth certificates for children born to the applicant and [REDACTED] on February 28, 1996, and October 23, 1997; and, a letter from the Minister, Church of God, Mount Sinai, San Francisco, California, attesting to the applicant's church membership since May 19, 1995, and that the minister has remained in contact with the applicant subsequent to his move to Orlando, Florida.

Documentation submitted indicates that the applicant's wife received approval of TPS benefits under Category A12. The applicant and his spouse submitted evidence that they were legally married prior to the initial registration period for Hondurans.

It is determined that the applicant submitted sufficient evidence to establish that he has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2), as he was, at the time of the initial registration period, the spouse of an alien currently eligible to be a TPS registrant. Consequently, the director's decision to deny the application for temporary protected status on this ground has been overcome.

Nevertheless, the application may not be approved at this time. It is noted that the Federal Bureau of Investigation (FBI) fingerprint results report, processed on February 23, 2005, indicates that the applicant has a record; however, the report detailing the reasons that the applicant's fingerprints were positively identified is not included in this record of proceedings. Therefore, the case is remanded to the director to analyze the reasons for the fingerprint identification and to determine the effect of the report on the applicant's eligibility for TPS. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further consideration and action consistent with the above.