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FILE:



Office: CALIFORNIA SERVICE CENTER

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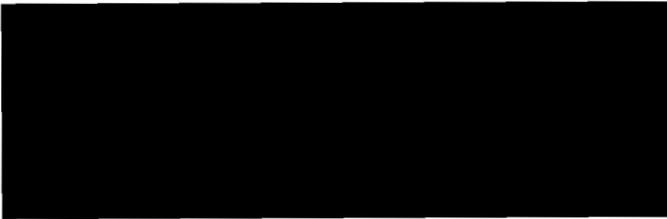
Applicant:



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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 record reveals that the applicant filed his initial TPS application on May 24, 2000 under CIS receipt number EAC 01 084 50928. The director denied that application on September 13, 2001, because the applicant failed to establish his eligibility to file for late initial registration. The applicant failed to appeal the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 10, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel for the applicant states that the applicant applied for TPS during the initial registration period, but, there are no records to support this claim. Counsel also states that the applicant is married to a TPS-eligible alien. The applicant also submits evidence in an attempt to establish that he filed for TPS during the initial registration period, and/or is eligible for late initial registration.

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.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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 parole; 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 initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on March 10, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) 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 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 appeal, counsel for the applicant states that the applicant initially applied for TPS on August 17, 1999. According to counsel, on August 17, 1999, the applicant went to the office of [REDACTED] a notary public, for assistance with his initial TPS application. The applicant submits a statement from [REDACTED]

[REDACTED] states that he helped prepare the TPS application on August 17, 1999. According to [REDACTED] the application was mailed by certified return receipt, but that the applicant lost his copies of the application and the return receipt. [REDACTED] the applicant's wife stated that she is protected under TPS and that her husband went to [REDACTED] to assist with the preparation of his TPS application before the deadline of the initial registration period. There is nothing in the record to indicate that the applicant submitted a TPS application during the initial registration period. Taken in conjunction with the applicant and [REDACTED] admissions that no record exists of this application, it cannot be established that the applicant submitted a TPS application during the initial registration period. Furthermore, as previously discussed by the director in the decision denying the initial application, the applicant submitted a copy of his marriage certificate, which indicated he was married on April 1, 2000. This is seven months after the initial registration period. While the regulations may allow spouses of aliens who are TPS-eligible to file applications after the initial registration period had closed, the marriage had to have existed during the initial registration period. Therefore, the applicant cannot claim eligibility for late initial registration based on his marriage to a TPS-eligible alien.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.