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**U.S. Citizenship  
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Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **JUL 25 2006**

[WAC 05 085 79147]

IN RE:

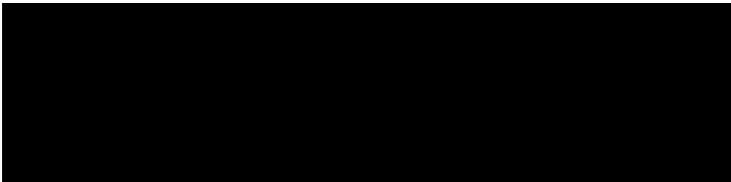
Applicant:



APPLICATION:

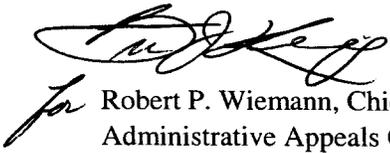
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

  
for Robert P. Wiemann, Chief  
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 TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the applicant's application for re-registration, under section 244 of the Act, because the applicant's initial TPS application had been denied.

On appeal, the applicant provides a brief statement and a copy of Form I-797, Notice of Action, already contained in 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 issue in this proceeding is whether the applicant is eligible to file for re-registration under section 244 of the Act.

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 in the United States 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, 2007, upon the applicant's re-registration during the requisite time period.

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 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 own statements. 8 C.F.R. § 244.9(b).

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed his initial application with Citizenship and Immigration Services (CIS), on August 11, 1999. That application was denied for abandonment on June 27, 2000, because the applicant failed to respond to the Service's request for additional evidence within the allotted timeframe. The applicant was given until July 30, 2000, to file a motion to reopen.

The applicant filed a motion to reopen on June 27, 2000.

In a decision dated November 29, 2000, the director granted the motion, affirmed his previous decision, and denied the application, because the applicant failed to respond to the Service's request for additional evidence.

On August 8, 2000, the Service reopened and reconsidered its previous decision.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on July 1, 2003.

In a notice of intent to deny, dated August 18, 2003, the Service requested that the applicant submit evidence to establish his eligibility to file for late registration. The applicant was also requested to submit evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. In response, the applicant submitted a letter from his former employer, a copy of his fingerprint notice, several pay stubs, and a loan disclosure application.

The director determined that the "record shows that you had established a residence in the United States as of December 30, 1998." However, the director determined that the applicant failed to establish his continuous physical presence in the United States during the requisite timeframe, and failed to establish his eligibility to file for late registration. Consequently, the director denied the application on November 25, 2003. The applicant was given 30 days to file an appeal. The applicant filed an appeal on January 8, 2004, approximately ten days after the allotted timeframe.

In a decision dated March 30, 2004, the Service, referring to the aforementioned appeal as a motion to reopen, dismissed the motion because it was untimely filed.

The applicant filed a subsequent Form I-821 on December 24, 2004. The applicant indicated on his Form I-821 application that he was re-registering for TPS.

Any Form I-821 application subsequently submitted by the same applicant after an initial TPS 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 for 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.

Since the initial TPS application was denied on June 27, 2000, and a subsequent application was denied on November 25, 2003, the Form I-821 application filed on December 24, 2004, cannot be considered as a re-registration. Consequently, the applicant is not eligible to file for re-registration under section 244 of the Act. Therefore, the director's decision to deny the application on this ground will be affirmed.

It is noted that the record contains the Federal Bureau of Investigation (FBI) fingerprint results report indicating that the applicant was arrested in San Jose, California on December 22, 2001, and charged with "1-001 COUNTS OF DRIVING UNDER THE INFLUEN," and again on April 20, 2003, and charged with "1-001 COUNTS OF INFLICT CORP INJ ON SPOUS." CIS must address this arrest and/or conviction(s) in any future decision or proceeding.

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.