



U.S. Citizenship
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FILE:



Office: TEXAS SERVICE CENTER

Date: JUN 05 2006

[SRC 04 096 54882]

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is stated to be a native and citizen of Honduras who is applying for 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 that he was eligible for late registration.

On appeal, counsel states the applicant is now eligible to apply for TPS as a late registrant because he had an application for TPS pending at the time of initial registration. Counsel further states that the applicant's initial application for TPS was filed in 1999 and that his current application for late registration should be granted because of extenuating circumstances.

On May 10, 1999, the applicant filed a Form I-821, Application for Temporary Protected Status. On June 14, 2000, a letter was sent to present counsel's office requesting that the applicant appear at a specified Application Support Center to be fingerprinted. The applicant failed to keep his appointment. On November 27, 2000, the director denied that application for abandonment.

Counsel asserted that the applicant is eligible for late registration because his previous TPS application was filled in 1999 and argues that his current application for late registration should be granted because of extenuating circumstances. The mere filing of a TPS application that was later abandoned does not provide the same "relief from removal" for late applications as that obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation. The provisions for late registration were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2).

It is also noted that counsel claims in a November 20, 2003 letter that the applicant never received any notice that his TPS application had been denied even though he had provided a new address. The record shows that the applicant advised the director of his new address on May 24, 2002. As the director had not yet received the applicant's new address, the November 27, 2000 decision of the director was, therefore, sent to his address of record in Brentwood, New York. Again, as with the request for fingerprinting noted above, a copy of the director's decision was simultaneously sent to present counsel on November 27, 2000 as well.

Section 244(c) of the Act, and the related regulations at 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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed an application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 10, 1999. That application was denied by the Director, Vermont Service Center (VSC), in St. Albans, Vermont on November 27, 2000 because the applicant failed to appear for fingerprinting. The director notified the applicant and counsel that any motion to reopen must have been filed by December 30, 2000. However, the record contains no indication that the applicant challenged the director's November 27, 2000 determination. The record shows that the applicant filed this application with CIS on February 18, 2004.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On March 1, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in this country.

On appeal, the applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file an approvable Application for Temporary Protected Status within the initial registration period. The applicant failed to appear for fingerprinting to complete an essential phase of the processing of his May 10, 1999 application; therefore, the director denied the application. Evidence of a denied application, even one timely submitted, does not constitute a registration during an initial period or excuse the lateness of an applicant's subsequent submission. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. The applicant has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application is denied for this additional 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.