



U.S. Citizenship
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Services

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JUN 07 2006

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 097 81071]

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.

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 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 a TPS application during the initial registration period on July 11, 2001 under CIS receipt number LIN 01 223 50146. The Director, Nebraska Service Center, denied that application for abandonment on October 30, 2001, because the applicant failed to appear for fingerprinting. There is nothing in the record to indicate that the applicant filed a motion to reopen the director's decision. The director submitted a subsequent TPS application on May 28, 2003 under CIS receipt number LIN 03 194 50251. The Director, Nebraska Service Center, denied that application on February 28, 2004, because the applicant failed to establish his eligibility to file for late initial registration and he had not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. There is nothing in the record to indicate that the applicant appealed the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 5, 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, the applicant states that he has responded to the requests for evidence. The applicant also requests that his file be reexamined.

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 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 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 January 5, 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, the applicant states that the January 5, 2005 denial was the first notice he has received since he applied for the TPS program. According to the applicant, he has responded to the requests for evidence and he believes he is entitled to TPS. The applicant also requests that his file be reexamined. It is noted that the October 30, 2001 and February 28, 2004 denial notices were sent to the applicant's address of record at [REDACTED] which is the address he provided on his first and second TPS applications. There is nothing in the record to indicate the notices were returned by the U.S. Postal Service as undeliverable. The applicant did not submit a new address until he filed his current TPS application.

The applicant, however, 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.

It is also noted that a Federal Bureau of Investigations (FBI) Fingerprint Results Report indicates that the applicant was arrested by the Waukegan Police Department on November 24, 2000 for "DUI/Alcohol". This charge must be addressed by CIS in any future proceedings.

In addition, it is further noted that the record contains a Form I-862, Notice to Appear, which was issued to the applicant on October 12, 1997, based on his entry without inspection at or near Brownsville, Texas, on October 12, 1997.

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.