U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2006
[WAC 05 084 73029]

IN RE: Applicant: [redacted]

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.

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 on appeal. The appeal will be dismissed.

The applicant claims 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 applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 25, 2002, under receipt number SRC 02 210 55237.[1] The Director of the Texas Service Center denied that application on November 13, 2002, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant did not file an appeal from the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 23, 2004, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on June 27, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew temporary treatment benefits. 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) (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:

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[1] It is noted that the applicant's initial TPS application was filed almost three years after the expiration of the initial registration period for Hondurans. Although the director did not discuss this issue in his denial decision, the applicant also failed to establish his eligibility for late initial registration as described at 8 C.F.R. § 244.2(f)(2).

(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 through August 20, 1999. The record reveals that the applicant filed the current TPS application with CIS on December 23, 2004.

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 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).

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.

It is noted that the applicant was apprehended by the United States Border Patrol near Brownsville, Texas, on March 2, 1999, after having entered the United States without inspection. The applicant told the Border Patrol officers that he left his home in Honduras on or about January 11, 1999, and entered the United States without inspection on March 1, 1999. The applicant was placed in removal proceedings, and an Immigration Judge in Miami, Florida, granted the applicant the privilege of voluntary departure from the United States on or before June 27, 2000, with an alternate order of removal if the applicant failed to comply with the grant of voluntary departure. The applicant failed to depart the United States in compliance with the grant of voluntary departure. It does not appear that a warrant of removal was ever issued in this case.

Since the applicant did not enter the United States until March 1999, he cannot establish continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The applicant has, thereby, failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). The applicant has also failed to submit sufficient evidence to establish his identity and nationality as described at 8 C.F.R. 244.9(a)(1). Therefore, the application also must be denied for these reasons.

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.