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 27 2006
[WAC 05 098 74230]

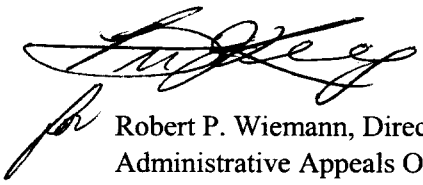
IN RE: Applicant: [redacted]

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.



for 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 is a native and 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 on July 8, 2002, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 02 233 55959. The Texas Service Center Director denied that application due to abandonment on March 21, 2003, because the applicant failed to respond to a request for additional evidence to establish her eligibility for TPS. The applicant had been requested to submit evidence establishing her: eligibility for late initial registration; continuous residence in the United States since December 30, 1998; continuous physical presence in the United States since January 5, 1999; and, nationality and identity. Because the initial application was denied due to abandonment there was no appeal available; however, the applicant could have filed a motion to reopen within 33 days of the date of the decision. The applicant did not file a motion to reopen the previous decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 6, 2005, and indicated she was re-registering for TPS benefits.

The director denied this 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 she has been living in the United States since 1998, and would like to work legally in this country. In support of the appeal, the applicant submits an original CIS receipt notice for her January 2005, employment authorization application, WAC 05 098 74231.

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, she 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 CIS on January 6, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

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).

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). As noted above, the applicant's earliest TPS application was also filed outside of the initial registration period. Therefore, the application also must be denied for this reason.

Beyond the decision of the director, the applicant also has also failed to submit sufficient evidence to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. The submitted documentation consists of: a statement from an acquaintance asserting the applicant's good character; a Florida Driver License issued on March 31, 2000; a Florida Certificate of Title dated June 5, 2001; and, a vehicle insurance policy dated in 2002. The character reference is not

supported by any corroborative evidence for the initial portions of the requisite periods. Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c) and the application must be denied for these reasons.

It is noted that the CIS Form I-797, receipt notice, for WAC 05 098 74231, application for employment authorization, improperly refers to her employment application as a request for authorization under the asylum program, and denies her application because the applicant does not have a pending asylum application. The Forms I-765, Application for Employment Authorization, submitted by the applicant, however, indicate that she has requested employment authorization under Category C19, in relation to her TPS applications. Although the receipt notice erred in stating that the applicant had applied under the provisions relating to asylum, the applicant is not eligible for employment authorization under the TPS program because her TPS application has been denied and her appeal has been dismissed.

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.