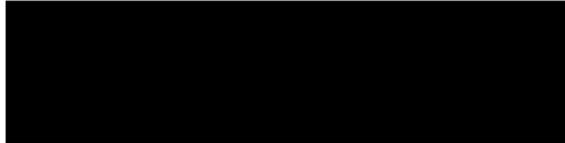




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



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FILE:



[EAC 06 221 76353]

OFFICE: VERMONT SERVICE CENTER

DATE: AUG 13 2007

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is to be 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 director denied the application because the applicant had failed to establish that he was eligible for late registration.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within 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. 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 January 5, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed his TPS application on May 9, 2006.

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 Citizenship and Immigration Services (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).

In a notice of intent to deny dated August 29, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit: (1) evidence of his identity and nationality; (2) evidence establishing his continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing the application; and (3) the final court disposition of his arrest on February 24, 2003, in Phoenix, Arizona, for "criminal damage."

The director noted that the applicant, in response, provided evidence of his identity, and adequate evidence to establish the residence and physical presence requirements, and that the applicant also submitted the final court disposition of his arrest verifying that he was convicted of the misdemeanor offense of criminal damage on October 23, 2003.¹ The director determined that the applicant, however, failed to establish that he was eligible for late registration and denied the application on December 12, 2006.

¹ The applicant's one misdemeanor conviction does not render him ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act.

On appeal, the applicant asserts that he has been residing in this country since the time TPS was granted to Hondurans. He further asserts that he is eligible for TPS because during the registration period he had a pending application for political asylum.

A review of the record indicates that on January 27, 1994, the applicant filed Form I-589, Request for Asylum in the United States. Based on the applicant's failure to appear for a scheduled interview on February 11, 1998, the asylum case was administratively closed and the applicant was advised by the Miami [Florida] Asylum Office on May 1, 1998, that his claim for asylum had not been granted but that his case had been referred to an immigration judge (IJ). In removal proceedings held on July 16, 1998, in Miami, Florida, the applicant failed to appear; therefore, the IJ determined that the applicant had abandoned any and all claims for relief from removal and ordered the applicant removed to Honduras *in absentia*.

Despite the applicant's claim that during the initial registration period he had a pending asylum application, the record indicates that prior to the initial registration period for Hondurans (from January 5, 1999 through August 20, 1999), the asylum application was administratively closed on February 25, 1998, and the IJ subsequently determined on July 16, 1998, that the applicant had abandoned any and all claims for relief from removal, including his asylum application. As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the denial of the asylum application, or immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2)(ii), to file an application for late registration under TPS. The TPS application, in this case, was not filed until May 9, 2006.

The applicant has failed to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the TPS application will be affirmed.

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.