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U.S. Citizenship  
and Immigration  
Services

*MI*

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

DEC 31 2007

[WAC 05 062 77723]

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 office that originally decided your case. Any further inquiry must be made to that office.

  
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 claims to be 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 March 19, 1999, under Citizenship and Immigration Services (CIS) receipt number SRC 99 145 51085. The Director, Texas Service Center, denied that application for abandonment on November 18, 2002, because the applicant failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. On December 13, 2003, the applicant filed a motion to reopen the denial decision. The Director, Texas Service Center, denied the motion on September 28, 2004, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 1, 2004, 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, counsel for the applicant states that the applicant's case was denied in error. The applicant also resubmits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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 is not a current TPS registrant. 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 CIS on December 1, 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 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, counsel for the applicant states that the director denied the application in error. According to counsel, the applicant was not an initial applicant in 2002, but was an annual renewal applicant. Counsel contends that the applicant provided the requested evidence on April 26, 2002, before the filing deadline. However, the application that was denied was the applicant's initial application, which was submitted on March 19, 1999. Furthermore, the request for additional evidence was issued on January 30, 2002. There is nothing in the record to indicate that the applicant responded to the January 30, 2002 notice. The applicant also resubmits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this does not mitigate the applicant's failure to file his TPS application within the initial registration period.

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 a Federal Bureau of Investigation fingerprint results report indicates:

1. On June 28, 1995, the Ft. Lauderdale, Florida Police Department arrested the applicant for "Aggrav Asslt – Weapon."
2. On October 8, 2003, the Broward County, Florida Sheriff's Office arrested the applicant for "Aggrav Asslt- Weapon."
3. On October 8, 2003, the Ft. Lauderdale, Florida Police Department arrested the applicant for "Aggrav Asslt – Weapon", and "Battery."

The final dispositions for these arrests are not included in the record, nor were the final court dispositions requested. It is also noted that the applicant has failed to declare on his applications that he has ever been arrested. CIS must address these arrests in any future proceedings.

The record of proceeding reflects that on April 23, 1997, an immigration judge ordered the applicant removed from the United States to Honduras. A Warrant of Removal/Deportation, Form I-205, was issued on July 27, 1997. The applicant failed to appear at the Miami district office on August 22, 1997, for his enforced departure.

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.