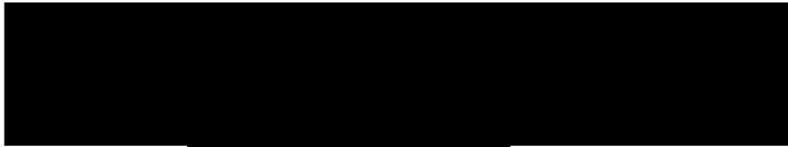


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**U.S. Citizenship
and Immigration
Services**

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FILE:



[WAC 05 104 76297]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: FEB 28 2007

IN RE:

Applicant:



APPLICATION:

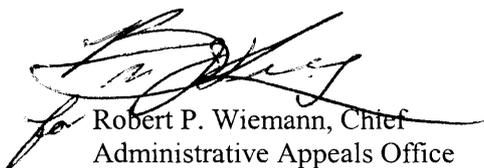
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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 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 the applicant filed a TPS application during the initial registration period on April 29, 1999, under Citizenship and Immigration Services (CIS) receipt number WAC 99 156 52321. The director denied that application on July 7, 2000, because the applicant had failed to respond to a request dated March 15, 2000, to submit evidence to establish his nationality and identity. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 12, 2005, and indicated that this is his "first application to register for Temporary Protected Status (TPS)."

The director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the director denied the application on May 17, 2006.

The applicant, in this case, was not filing a re-registration application but, rather, he was filing his first or initial application; therefore, this decision of the director will be withdrawn, and a decision will be made based on late initial application.

On appeal, the applicant submits a statement.

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 July 5, 2007, 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 January 12, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed 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).

It is noted that prior to the director's denial decision dated May 17, 2006, a Notice of Intent to Deny was issued on February 5, 2006, requesting that the applicant submit evidence to establish: (1) eligibility for late initial registration; (2) nationality and identity; and (3) continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The applicant, in response, furnished evidence to establish nationality and identity, and evidence to establish continuous residence and continuous physical presence during the qualifying period; however, he neither addressed nor submitted any evidence to establish eligibility for late initial registration.

On appeal, the applicant asserts that he was filing a late registration based on his marriage to a Honduran who was granted TPS. The record of proceeding contains a copy of [REDACTED]'s Employment Authorization Card issued on September 4, 2003 (Category A12), and a copy of the applicant's marriage certificate indicating that the applicant and [REDACTED] were married in Los Angeles, California, on June 16, 2003.

While the regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, the applicant, in this case, was not married to [REDACTED] during the initial registration. To be eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv), the qualifying relationship must have existed during the initial registration period. Since the applicant, during the initial registration period, was not the spouse of an alien eligible to be a TPS registrant, he is not eligible for late registration.

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.