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U.S. Citizenship
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FILE: [REDACTED]
[WAC 05 097 81086]

Office: California Service Center

Date: JUL 27 2007

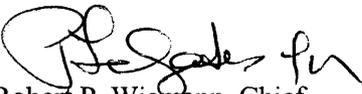
IN RE: Applicant: [REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, now Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted and 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 director denied the current application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

A subsequent appeal from the director's decision was dismissed on September 1, 2006, after the Chief of the AAO also concluded that the applicant was not eligible to re-register for TPS. The AAO also determined that the applicant failed to show that the current application should be accepted as a late initial registration. On September 29, 2006, the applicant submitted a motion to reopen.

On motion to reopen, the applicant asserts that he has lived in the United States since 1997, and that he has answered all the documents that he has received from CIS. The applicant also submits copies of some evidence in an attempt to establish his eligibility TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.4; and
- (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:

- (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 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).

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 applicant's motion to reopen consists of some evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. However, the applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). As such, this issue on which the underlying decision was based has not been overcome on motion.

It is noted that the applicant was arrested by United States Border Patrol agents near Laredo, Texas, on February 21, 1999. The applicant stated to the agents that he had left Honduras on January 29, 1999, traveled through Guatemala, and then entered Mexico on January 31, 1999. In addition, the applicant stated that he traveled through Mexico, and then arrived Nuevo Laredo, Mexico, on February 20, 1999. Therefore, the applicant could not have established his qualifying continuous residence and continuous physical presence in the United States. 8 C.F.R. § 244.2(b) and (c). Therefore, the application must also be denied for these reasons.

Furthermore, a review of the record reflects that an Immigration Judge at San Antonio, Texas, granted the applicant voluntary departure in lieu of deportation on or before January 5, 2000.

Although not addressed by the director, the record of proceedings contains a Federal Bureau of Investigation report reflecting following offenses:

- (1) On December 2, 2000, the applicant was arrested by the Miami Police Department and charged with "Disorderly Intoxication Municipal Ordinance;"
- (2) On December 2, 2001, the applicant was arrested by the Miami Police Department and charged with "Aggrav Battery;"
- (3) On January 24, 2004, the applicant was arrested by the Florida Highway Patrol and charged with "Resisting Officer – Refusal to Sign Accept Summons" and "Disorderly Intoxication."

In any future proceedings before CIS, the applicant must submit evidence of the final court disposition of these and any other charges against him.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated September 1, 2006, is affirmed.