



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 25 2007

[WAC 05 099 75245]

IN RE:

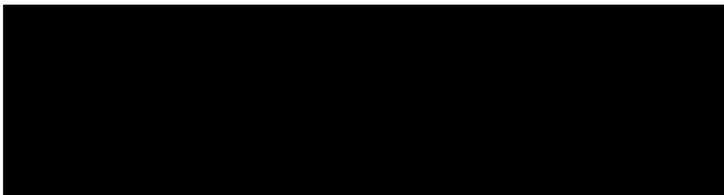
Applicant:



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.

for 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 an initial TPS application on December 14, 1999, under Citizenship and Immigration Services (CIS) receipt number WAC 00 074 50291. The director denied that application on May 21, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on January 8, 2004. The applicant did not file a motion to reopen within 30 days from the date of the denial.

It is noted at this point that on October 7, 1992, the applicant filed Form I-589, Request for Asylum in the United States. On May 29, 1997, in San Diego, California, the Immigration Judge (IJ) denied the application for asylum and for withholding of deportation and granted the applicant voluntary departure on or before December 1, 1997, with an alternate order of deportation to Honduras. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On June 29, 1999 [during the initial registration period for Hondurans from January 5, 1999 through August 20, 1999], the BIA administratively closed removal proceedings to accord the applicant an opportunity to file an application for TPS. The applicant did not file his TPS application during the registration period, but rather, the application was filed on December 14, 1999, after the initial registration period for Hondurans had closed. As provided in 8 C.F.R. § 244.2(g), the applicant must file an application for late registration with the appropriate Service Center director within a 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2), in this case, following the decision of the BIA dated June 29, 1999. The application was not filed until December 14, 1999. Therefore, the applicant was not eligible for late initial registration.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 7, 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 October 3, 2005.

The applicant, in this case, was not filing a re-registration application but, rather, he was filing his first or initial application. Therefore, this application will be treated as the applicant's "first application" to register for TPS, the decision of the director will be withdrawn, and a decision will be made based on late initial application.

On appeal, counsel 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 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 7, 2005.

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).

On appeal, counsel asserts that the applicant has never received any correspondence regarding a denial of the application on May 21, 2004. He states that after waiting for five years for the decision on the previous application, the applicant gave up and decided to refile in January 2005 pursuant to the new extension for TPS. A review of the record indicates that the request to appear for fingerprinting on January 8, 2004 (dated December 11, 2003), and the director's denial decision dated May 21, 2004, were both mailed to the applicant's most recent address at that time (624 Cadman Street, San Diego, CA 92114). There is no evidence in the record that the applicant had advised CIS of a change of his address, nor is there evidence that the notices were returned to CIS as undeliverable.

As noted above, the applicant filed the current application (WAC 05 099 75245) on January 7, 2005. The applicant neither addressed nor 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); therefore, he is ineligible for TPS. Consequently, the TPS application will be denied for this reason.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record indicates that the applicant was subsequently fingerprinted on January 31, 2005, and on March 20, 2006. The Federal Bureau of Investigation (FBI) fingerprint results reports indicate the following:

- (1) On March 6, 1993, in San Diego, California, the applicant was arrested for "felony DUI alcohol." The FBI report indicates that the applicant was subsequently convicted of "DUI alcohol drugs cause bodily injury," 23153(a) VC. The actual final court disposition of this offense, however, is not contained in the record.

- (2) On March 22, 2001, in San Diego, California, the applicant was arrested for “fraud-false statement.” The record of proceeding contains court records of the United States District Court, Southern District of California, under Criminal Case No. [REDACTED] indicting that on September 21, 2001, the applicant was convicted of “False Statement in Application for a United States Passport,” in violation of 18 U.S.C. § 1542, a felony. He was committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of “time served,” and he was placed on probation for a term of 2 years.

Willfully and knowingly making false statements in an application for a U.S. Passport is a crime involving moral turpitude. *Matter of B-*, 7 I&N Dec. 342 (BIA 1956); *Matter of Correa-Garces*, 20 I&N Dec. 451 (BIA 1992). The court’s indictment record indicates that the applicant willfully and knowingly provide a false statement in the application for a passport with intent to induce and secure for his own use.

The applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, due to his record of at least one felony conviction, detailed above. Furthermore, the applicant’s conviction of a crime involving moral turpitude renders him inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. 244(c)(1)(A)(iii) of the Act. Consequently, the application will also be denied for these reasons.

It is noted that based on a motion filed on October 31, 2005, by the Department of Homeland Security (DHS) requesting that removal proceedings be reinstated, the BIA, on January 24, 2006, granted the motion, the order to administratively close proceedings was vacated, and the applicant was permitted to depart from the United States voluntarily within 30 days from the date of the order. On March 9, 2006, in San Diego, California, Form I-205, Warrant of Removal/Deportation, was issued based on a final order by the BIA.

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.