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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 01 2007
[WAC 05 228 93851]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.

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

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 applying for 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 failed to establish he was eligible for late initial registration.

On appeal, counsel states:

Applicant filed for TPS as a late registrant in 2005. Under C.F.R. 244.2(F)(2)(ii), an applicant may apply for late registration of TPS if he had an application for adjustment of status pending during the period for initial registration, January 5, 1999 – August 20, 1999. Mr. [REDACTED] has had a pending I-485, Application to Adjust Status, since at least September 22, 1998, before the initial registration period, but expects this application to be denied due to being in proceedings. Mr. [REDACTED] meets the other requirements under C.F.R. 244.2, and therefore wishes to request TPS status.

Counsel submits a copy of a Form I-485, Application to Register Permanent Residence or Adjust Status, that the applicant received from his former counsel that was signed by the applicant on September 22, 1998. Counsel also submits a copy of a Form I-797C, Receipt Notice, showing that the applicant's Form I-765, Application for Employment Authorization, with "Class requested CO9" was received on October 14, 1999 along with a copy of Mr. [REDACTED]'s Form I-766, Employment Authorization Card, valid from November 23, 1999. Counsel argues that this evidence establishes that the applicant's I-485 was filed on September 22, 1998 was pending before the initial registration period.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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 section 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 conditions described in paragraph (f)(2) of 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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed his application with Citizenship and Immigration Services on May 17, 2005.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On May 1, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in this country. He also submitted a copy of a Form I-220B, Order of Supervision, dated February 1, 1999 and a copy of a "U.S.I.N.S." fee receipt dated May 10, 2001 showing that the fees for a Form I-130, Petition for Alien Relative, and a Form I-485 in the applicant's behalf were collected on that date.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on August 15, 2006.

On appeal, counsel states that the applicant has had a pending I-485, Application to Adjust Status, since at least September 22, 1998, before the initial registration period, expects this application to be denied due to being in

proceedings, and that he fulfills all other requirements for TPS eligibility. Counsel submits a copy of a Form I-485 that the applicant obtained from his former counsel that was signed by Mr. [REDACTED] on September 22, 1998. Counsel also submits a copy of a Form I-797C, Receipt Notice, showing that the applicant's Form I-765, Application for Employment Authorization, with "Class requested CO9" was received on October 14, 1999 along with a copy of a copy of Mr. [REDACTED] Form I-766, Employment Authorization Card, valid from November 23, 1999. Counsel argues that this evidence establishes that the applicant's I-485 was filed on September 22, 1998 was pending before and during the initial registration period.

Review of the record does not establish that the Form I-485 that the applicant signed on September 22, 1998 was ever formally filed with Citizenship and Immigration Services. It is noted that the approval of an Employment Authorization Card does not establish that this Form I-485 application was properly filed. Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988).

In order to qualify for late registration under 8 C.F.R. § 244.2(f)(2)(ii), the applicant must have had an application for adjustment of status pending during the initial registration period. The record reflects that the applicant did not file his first Form I-485 until April 30, 2001, after the initial registration period from January 5, 1999, through August 20, 1999 had expired.

The applicant has not submitted sufficient evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

In removal proceedings held on January 9, 1998, an Immigration Judge in Miami, Florida, granted the applicant voluntary departure from the United States on or before January 8, 1999, with an alternate order of deportation if the applicant should fail to depart as ordered. There is no evidence in the record that the applicant departed from the United States as required.

An alien applying for TPS 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.