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U.S. Citizenship
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Services

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FILE:

[REDACTED]

OFFICE: California Service Center

DATE: **MAY 21 2007**

[WAC 05 159 74451]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

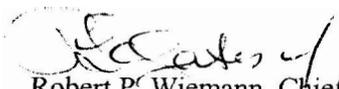
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 on the grounds that the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States from the dates applicable for TPS applicants from Honduras, and that he was eligible for late TPS registration.

On appeal the applicant requests that his case be reviewed.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

Applicants for TPS from Honduras 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 initial TPS application on July 7, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he satisfied at least one of the criteria enumerated 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. *See* 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. *See* 8 C.F.R. § 244.9(b).

The applicant filed an initial Form I-821, Application for Temporary Protected Status, with the Vermont Service Center (VSC) on July 7, 2003 – nearly four years after the close of the initial registration period for Honduran nationals. That application [EAC 03 213 50179] was denied by the Director, VSC, on April 12, 2004, on the grounds that the applicant failed to establish that he qualified for late TPS registration under one of the criteria enumerated at 8 C.F.R. § 244.2(f)(2); that he had resided continuously in the United States since December 30, 1998, as required for TPS applicants from Honduras under 8 C.F.R. § 244.2(c); and that he had been continuously physically present in the United States from January 5, 1999, until the date his application was filed, as required for TPS applicants from Honduras under 8 C.F.R. § 244.2(b).

The applicant filed the current TPS application with the California Service Center (CSC) on March 8, 2005. On July 25, 2006, the director sent the applicant a notice of intent to deny (NOID), requesting the submission of evidence that he was eligible for late registration, his date of entry into the United States, his nationality/identity, and that he was continuously resident and physically present in the United States from the dates applicable for TPS applicants from Honduras. The applicant responded with some documentation pertaining to his residence and physical presence in the United States.

By decision dated August 17, 2006, the Director, CSC, determined that the evidence submitted in response to the NOID was insufficient to establish the applicant's continuous residence in the United States since December 30, 1998, and continuous physical presence in the country since January 5, 1999, as required for TPS applicants from

Honduras. The director also found that the evidence of record failed to establish the applicant's eligibility for late TPS registration. Accordingly, the application was denied.¹

On appeal, the applicant requests that his case be reviewed. No further evidence has been submitted.

The AAO concurs with the director's finding that the applicant has failed to establish that he is eligible for late TPS registration under any of the qualifying conditions enumerated at 8 C.F.R. § 244.2(f)(2). Accordingly, the director's denial of the application will be affirmed on that ground.

Based on the evidence of record, the AAO also concurs with the director's finding that the applicant has failed to establish that he has continuously resided in the United States since December 30, 1998, and was continuously physically present in the United States from January 5, 1999, to the date of filing, as required for TPS applicants from Honduras under 8 C.F.R. § 244.2(c) and (b). The materials submitted by the applicant as evidence of his residence and physical presence do not meet the documentary requirements set forth at 8 C.F.R. § 244.9(a)(2). In addition, a Form I-213, Record of Deportable/Inadmissible Alien, in the file indicates that the applicant was arrested after crossing the Rio Grande from Mexico into Texas on December 20, 1999 – nearly a year after the requisite starting dates for continuous residence and physical presence in the United States.² Accordingly, the director's denial of the application will also be affirmed on these grounds.

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. *See* 8 C.F.R. § 244.17. In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS.

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 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.

¹ The AAO notes that the record already included a photocopy of the applicant's Honduran passport with a photo identification, thereby establishing the applicant's identity and Honduran nationality, in accordance with the requirements of 8 C.F.R. § 244.9(a)(1).

² A Warrant of Removal/Deportation was issued by the District Director in San Antonio, Texas, on August 24, 2002, pursuant to the order of an Immigration Judge issued on March 27, 2002, when the applicant failed to appear at a scheduled hearing.