



U.S. Citizenship  
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Services

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FILE:   
[WAC 05 077 73276]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAY 31 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.

*Cindy M. Gomez 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 sustained and the application will be approved.

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 application because the applicant had failed to establish that he was eligible for late registration.

On appeal, the applicant 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 the current TPS application on December 16, 2004.

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).

The director noted that the applicant filed Form I-821, Application for Temporary Protected Status, and indicated on the form that he was filing for re-registration. In a notice of intent to deny dated April 21, 2005, the applicant was advised that CIS records failed to indicate that he had previously filed an initial TPS application; therefore, he was requested to submit a copy of Form I-797, Notice of Receipt or Notice of Approval, of a previously-filed Form I-821, or to submit evidence that he was eligible for late initial registration described in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted evidence to establish continuous residence and continuous physical presence during the requisite periods. He neither addressed nor submitted any evidence to establish eligibility for late initial registration; therefore, the director denied the application on July 12, 2005.

On appeal, the applicant asserts that he is Honduran, not Salvadorian as indicated by the director on the Form I-797C, nor is he an applicant for asylum, and that he is not applying for TPS for the first time. He submits copies of his Honduran birth certificate, copies of Forms I-797C as evidence of his applications for employment authorization (EAD), and a copy of his mother's EADs.

A review of CIS file of the applicant's mother ( ) indicates that on March 22, 1999, Ms. filed Form I-821, Application for Temporary Protected Status. She included the applicant on her TPS application as her dependent, and indicated that the applicant was residing with her in California. The applicant, at that time, was 16 years of age, having been born on February 20, 1983. On June 1, 2000, Ms. was approved TPS.

The applicant, on June 1, 2000, was eligible for TPS as the dependent child of Ms. Therefore, the applicant has established that he met the qualification of a child of an alien eligible to be a TPS registrant described in 8 C.F.R. § 244.2(f)(2)(iv). Additionally, the applicant has submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

Accordingly, the director's decision will be withdrawn, and the application will be approved.

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 met this burden.

**ORDER:** The appeal is sustained and the application is approved.