



U.S. Citizenship
and Immigration
Services

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ML

[REDACTED]

FILE: [REDACTED]
[WAC 03 041 51725]

OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 14 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:

[REDACTED]

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, and is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

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 failed to establish he was eligible for late registration.

On appeal, counsel for 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 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.

Persons applying for TPS offered to Hondurans must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 26, 2002.

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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on November 12, 2003.

On appeal, counsel for the applicant asserts that the applicant qualifies for late initial registration because he had a pending application for cancellation of removal and, subsequently, an appeal pending before the Board of Immigration Appeals (BIA), during the initial registration period for Hondurans. In support of the appeal, counsel submits photocopies of documents already contained in the record of proceeding.

The record reveals that the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, on October 23, 1998. On July 21, 1999, an Asylum Officer in San Francisco, California, determined that the applicant had not established his eligibility for asylum and for withholding of removal and referred the applicant for a hearing before an Immigration Judge. On October 26, 1999, the applicant filed a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.

On June 21, 2002, in a hearing before an Immigration Judge in San Francisco, the applicant withdrew his applications for asylum and for withholding of removal. The Immigration Judge denied the application for cancellation of removal and granted the applicant the privilege of voluntary departure from the United States to Honduras on or before August 20, 2002, with an alternate order of removal if the applicant failed to comply with the grant of voluntary departure.

On July 22, 2002, the applicant filed an appeal from the order of the Immigration Judge with the BIA. CIS records indicate that the BIA dismissed the appeal on November 13, 2003, and issued a final order of removal.

It is noted that [REDACTED], a United States citizen, filed a Form I-130, Petition for Alien Relative, on the applicant's behalf seeking to classify him as the spouse of a United States citizen. The petition was approved on September 10, 2003; however, the record contains a final divorce decree from the County Court at Law, Hidalgo, Texas, indicating that the applicant and [REDACTED] were divorced on January 21, 2003. There is no indication in the record that the applicant ever filed a Form I-485, Application for Adjustment of Status to Permanent Residence, with CIS.

The evidence of record confirms that the applicant had pending applications for asylum, withholding of removal, and cancellation of removal, during the initial registration period for Hondurans. When the applicant filed his Form I-821, Application for Temporary Protected Status, on September 26, 2002, his appeal from the order of the Immigration Judge was still pending before the BIA. Therefore, the applicant qualifies for late initial registration as described at 8 C.F.R. § 244.2(f)(2)(ii). However, the application may not be approved at this time. The record reveals that the applicant was arrested in San Jose, California, on December 10, 1999, and charged with inflicting corporal injury on a spouse or co-habitant in violation of section 273.5 PC, a felony. Although counsel has stated that no charges were ever filed in connection with this arrest, the applicant has not provided any official court documents reflecting the final court disposition of this arrest.

The denial decision will be withdrawn, and the matter will be remanded. The director shall provide the applicant with an opportunity to provide the final court disposition of the arrest detailed above. Accordingly, the matter will be remanded for action consistent with the foregoing and issuance of a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter is remanded for further action consistent with the above and entry of a new decision.