



U.S. Citizenship
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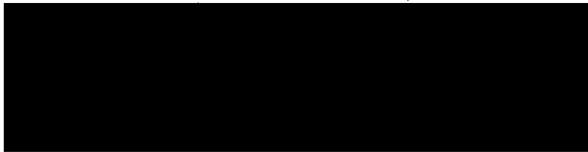
OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 30 2007

[WAC 05 155 70007]

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

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 (AAO) 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 a TPS application during the initial registration period on March 22, 1999, under receipt number WAC 99 130 50318. The District Director, San Francisco, California, denied that application on September 25, 2000, because the applicant had failed to establish that he is a national of Honduras. The district director noted that in 1991, the applicant had claimed to be El Salvadoran and presented documentation to substantiate this claim. On February 5, 2001, the applicant filed an appeal from the denial decision. The AAO rejected the applicant's appeal on October 30, 2002, because the appeal was untimely filed, and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 4, 2005, and indicated that this is his "first application to register for Temporary Protected Status (TPS)."

The Director, California Service Center, 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.

On appeal, the applicant states that he is not applying for re-registration but, rather, he is applying as a new "tardy" [late] registration under the provisions of 8 C.F.R. § 244.2(f)(2)(iv), as the spouse of a registered TPS applicant. He submits additional evidence to support his claim.

The applicant, in this case, was not filing a re-registration application but, rather, he was filing his first or initial application; therefore, this decision of the director will be withdrawn, and a decision will be made based on late initial application.

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 January 5, 2009, 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 March 4, 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).

In support of his claim that he is eligible for late registration, the applicant submits a copy of an Employment Authorization Card issued to [REDACTED] on September 21, 2003 (under category A12) and an English-language translation of a marriage certificate of the applicant and [REDACTED] on May 12, 1984. A review of Ms. [REDACTED]'s file ([REDACTED]) indicates that she was granted TPS on July 11, 2000. On her TPS application, she listed the applicant as her spouse and claimed that she and the applicant were married in Honduras on May 12, 1984. While regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. It is noted that the applicant has not provided a certified marriage certificate issued in Honduras as evidence that he and Ms. [REDACTED] are in fact married. Section 101(a)(48)(b) of the Act.

The applicant has failed to establish that he has met the requirements of 8 C.F.R. § 244.2(f)(2)(iv), or any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the TPS application will be denied for this reason.

The record of proceeding contains a Form I-213, Record of Deportable Alien, under file number [REDACTED], indicating that the applicant was apprehended by the United States Border Patrol on February 7, 1989, subsequent to his entry into the United States without inspection near the Brownsville, Texas, Port of Entry, on February 2, 1989. When apprehended, the applicant was in possession of a Honduran passport issued to the applicant in Honduras on January 13, 1989. Form I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, was also issued on February 7, 1989, in McAllen, Texas. In removal proceedings held on September 8, 1989, in Harlingen, Texas, the applicant failed to appear, and the Government was unable to locate the applicant. Therefore, the Immigration Judge (IJ) administratively closed removal proceedings.

The applicant subsequently filed Form I-821, Application for Temporary Protected Status, during the 1991 TPS designation for El Salvador, claiming that he was a citizen and national of El Salvador. That TPS application was approved on November 19, 1991, in San Francisco, California, [file number [REDACTED]].

In a sworn statement before an officer of the Immigration and Naturalization Service on January 8, 1992, the applicant stated that he applied for asylum in February 1989, as a Honduran national, using the name [REDACTED].¹ The applicant also admitted that he filed and was granted TPS in September 1991 as an El Salvadoran. The applicant, on January 8, 1992, withdrew the TPS application and became a cooperating witness for the Service regarding a fraud investigation targeting TPS fraud and other immigration benefit fraud. In removal proceedings held on March 17, 1992, the IJ granted the applicant voluntary departure to Honduras on or before September 17, 1992, and he was also granted employment authorization. Based on the ongoing fraud investigation, the applicant was granted several extensions of his voluntary departure, ultimately until July 12, 1995. Because the applicant failed to depart as required, a Form I-205, Warrant of Deportation, was issued on July 13, 1995, in San Francisco, California. On September 8, 1995, the applicant filed a motion to reopen proceedings in order to present an application for asylum (Form I-589). The IJ denied the motion on

¹ That asylum application has since been located in file [REDACTED]. The asylum application was signed by Mr. [REDACTED] on February 8, 1989; however, there is no evidence that the application was adjudicated. Regardless, the BIA had determined that the applicant was not eligible for asylum.

November 8, 1995. The applicant appealed the IJ's decision to deny the motion to the Board of Immigration Appeals (BIA). On February 1, 1997, the BIA concurred with the determination of the IJ, and added that it also appeared that the applicant was ineligible for asylum based upon 8 C.F.R. § 208.13(c) [mandatory denial, as an alien who falls under the provisions of section 208(b)(2) of the Act]. Therefore, the BIA dismissed the appeal.

Based on documentation contained in the record, it is concluded that the applicant has established that he is a national of Honduras. The applicant, however, is inadmissible to the United States, pursuant to section 212(a)(6)(C)(i) of the Act, for fraudulently procuring TPS benefits by claiming to be an El Salvadoran in November 1991. Additionally, the applicant is ineligible for TPS pursuant to section 208(b)(2)(A) of the Act. While a waiver is available for inadmissibility under section 212(a)(6)(C)(i) of the Act, there is no waiver available to an alien found ineligible under section 208(b)(2) of the Act. *See* section 244(c)(2)(B)(ii) of the Act. Therefore, the TPS application will also be denied for these reasons.

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.