

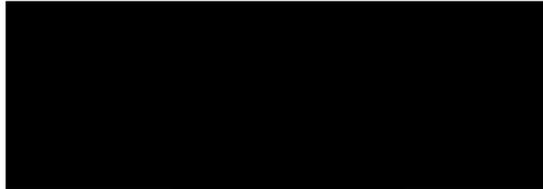


U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: California Service Center Date: **SEP 06 2007**  
[WAC 05 090 80003, as it relates to SRC 01 249 55515]

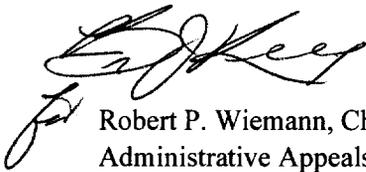
IN RE: Applicant: [REDACTED]

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 California Service Center. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's temporary protected status was denied by the Director, Texas Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case will be remanded for further consideration and action.

The applicant is stated to be 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 record reveals that the applicant filed a late initial TPS application on July 28, 2001 under CIS receipt number SRC-01-249-55515. The Director, Texas Service Center, denied that application on February 25, 2002, for late registration, and stated that the applicant must wait until a decision on a pending application for adjustment of status" is made, and then he can file a TPS application within 60 day. The director, therefore, determined that the applicant was not eligible to file for TPS as an initial registrant. The record does not reflect that the applicant filed an appeal of that decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 29, 2004, under receipt number WAC-05-090-80003, and indicated that he was filing a re-registration application. The director denied that application on August 15, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for TPS.

As noted above, the Texas Service Center Director incorrectly stated in her denied notice that the applicant had a pending adjustment of status application and must wait until a decision is made on that case before filing for TPS.

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.

The statute and regulations provisions do not prohibit the applicant from filing a TPS application while an adjustment of status application is pending. It is noted that the record does not contain a copy of the adjustment of status application, nor is there a copy of any decision on the application. Therefore, the Texas Service Center Director's decision to deny the initial application is withdrawn.

The director's denial of the initial application will be withdrawn; the application will be remanded, and the director shall a new decision. The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Hondurans.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.