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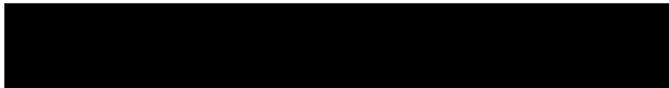


Office: VERMONT SERVICE CENTER

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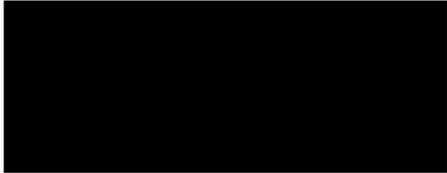
IN RE:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras who seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Finally the director found that the applicant failed to provide a requested statement regarding his health status.

On appeal, counsel for the applicant asserts that the applicant did not receive the director's request for further evidence (RFE) and that the applicant applied late for TPS because he was afraid his health status would disqualify him for the benefit.

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 phrase 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.

The phrase 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.

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.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. 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.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 record reflects that the applicant filed his initial TPS application on June 1, 2006- almost seven years after the close of the initial registration period for Hondurans. The director accepted the application under the late filing provision in 8 C.F.R. § 244.2(f)(2). On his application, the applicant indicated that he had been arrested and that he had a communicable disease of public significance. In support of his application, the applicant submitted a copy of his Honduran passport; a final disposition showing that he had pled guilty to disorderly conduct in the Criminal Court of the City of New York, New York County, on September 28, 1998; a final disposition showing that the Criminal Court of the City of New York, Queens County, had adjourned a single charge of criminal mischief against him on May 24, 2004, and had dismissed another single charge of harassment against him in on November 24, 2004; and, residential lease agreements from January 1, 1998 to December 31, 2003.

On November 29, 2006, the director requested that the applicant submit further evidence of his eligibility for late registration, his qualifying continuous residence and continuous physical presence, and his health status. The

request was mailed to the applicant's representative of record, [REDACTED] at GMHC, Inc. [REDACTED]. The applicant was given 30 days to respond to the RFE. The record reflects that the applicant failed to respond to the director's request.

On January 26, 2007, the director denied the application, determining that the applicant had failed to establish he was eligible for late registration, failed to establish his qualifying continuous residence and continuous physical presence, and failed to provide a statement explaining his communicable disease.

On appeal, counsel asserts that the applicant did not receive the RFE and that the applicant applied late for TPS because he was afraid his health status would disqualify him for the benefit. The applicant also submits a letter from [REDACTED] stating, in part, that the applicant has been treated regularly at her clinic since 1995.

This evidence submitted does not overcome the applicant's failure to file his TPS application within the initial registration period. Although the AAO is sympathetic to the applicant's health status, his failure to initially apply for TPS because he feared this status made him ineligible is not a basis for late registration. There is no exceptional circumstance exception for late filing under the Act or the regulations. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on that basis will be affirmed.

Regarding the applicant's indication that he had communicable illness of public health significance, under the TPS regulations at 8 C.F.R. § 244.3(b), an alien who is inadmissible on grounds that may be waived, including the ground identified under section 212(a)(1)(A)(i) of the Act, must be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601, Application for Waiver of Ground of Excludability. Further, that waiver application must be properly filed and approved before eligibility for TPS can be considered. In the applicant's case, however, filing a Form I-601 waiver request would serve no useful purpose, as his TPS eligibility has already been considered, and he has been found ineligible due to late initial registration.

The letter from [REDACTED] along with documentation submitted with his TPS application, is sufficient to establish the applicant's qualifying continuous residence and continuous physical presence. Consequently, the director's decision to deny the application on these grounds will be withdrawn.

The application must, however, be denied based on failure to qualify for late registration. 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.