

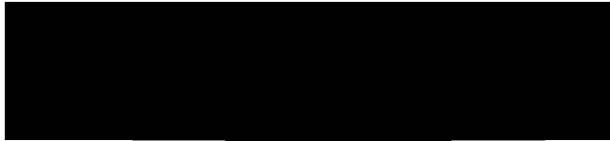
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

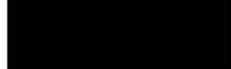


**U.S. Citizenship
and Immigration
Services**

BY FAX IC COPY



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: APR 28 20

[WAC 05 096 80550

INRE:

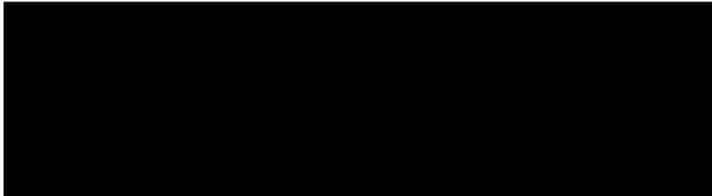
Applicant:



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, 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 an untimely appeal that will be treated as a motion to reopen. The motion to reopen will be dismissed.

The applicant is a 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 July 6, 1999, under Citizenship and Immigration Services (CIS) receipt number LIN 99 22551889. The Director, Nebraska Service Center, denied that application for abandonment on November 13, 2001, because the applicant failed to appear for fingerprinting. There is nothing in the record to indicate that the applicant filed a motion to reopen the director's decision. The applicant filed a subsequent TPS application on February 3, 2003 under CIS receipt number LIN 03 099 51699. The Director, Nebraska Service Center, denied that application on June 5, 2003 because the applicant failed to establish her eligibility for late initial registration. There is nothing in the record to indicate that the applicant filed an appeal to the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 4, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On motion, counsel for the applicant states that the applicant qualifies for late registration because she had previously applied for TPS. The applicant also submits statements and evidence in an attempt to establish her eligibility for TPS.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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 (t)(2) of this section.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record reveals that the applicant filed the current application with CIS on January 4, 2005.

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

On motion, counsel for the applicant states that the applicant qualifies for late registration because she filed an application for benefits (TPS) during the initial registration period. According to counsel, the applicant had submitted TPS applications with the assistance of a non-lawyer who was ineffective and failed to check the appropriate box at the top of the application. Counsel asserts that the February 3, 2003 TPS application should have been treated as a late initial registration. The applicant also submits statements and evidence in an attempt to establish her eligibility for TPS. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period.

Counsel's claim that the applicant is eligible for late initial registration because she had a pending TPS application during the initial registration period is incorrect. A TPS application is not an application for change of status as provided in 8 C.F.R. 244.2(t)(2), and does not render the applicant eligible for late registration. Taking counsel's argument to its logical extreme, an alien who had abandoned his initial application could then file a new application within 60 days after the abandonment, abandon the new application, and perpetuate this

contempt of the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without ever being approved for TPS and/or successfully completing the application process. However, the provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. Furthermore, CIS is not responsible for the inaction, or ineffective action, of the applicant's representative.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

Beyond the decision of the director, it is noted that the applicant provided a photocopy of the first page of her Honduran passport, ~~##~~ in an attempt to establish her nationality and her identification. However, the passport was signed by the applicant and issued in Honduras on May 1, 1999. Thus, the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c), thereby precluding a finding that the applicant was in the United States during the operable timeframe. Therefore, the application must be denied on this basis.

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 motion to reopen is dismissed.