

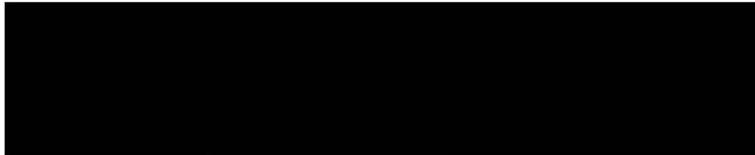
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date: **APR 28 2008**

[EAC 01 081 50430]

[EAC 03 15852231 - motion]

INRE:

Applicant:



APPLICATION:

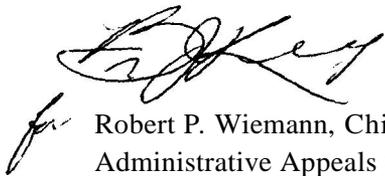
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, reopened, and denied again by the Director, Vennont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a native and 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 director denied the application because the applicant failed to establish that he was eligible for late registration. The director also noted in his decision that the applicant was already over 21 years old at the time of filing his application; and therefore, he did not qualify as a child of an eligible TPS registrant.

On appeal, the applicant asserts his eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 c.P.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, 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 section 244.3;
- (e) Is not ineligible under 8 C.P.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 conditions described in paragraph (f)(2) of this section.

The phrase *continuously physically present*, as defined in 8 c.P.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.P.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. The record reveals that the applicant filed his initial application for TPS with Citizenship and Immigration Services (CIS), on January 18, 2001.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he satisfied at least one of the provisions described in 8 C.P.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 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.P.R. § 244.9(b).

On appeal, the applicant states that he hired a non-attorney to submit his TPS application; however, that individual did not submit the application on time. The applicant did not submit any additional evidence along with his appeal; therefore, the record will be considered complete.

A review of the record of proceedings reflects that the TPS application was not properly filed with the Service Center until January 18, 2001, after the initial registration period had closed. On June 15, 2001, the director requested the applicant to submit evidence to establish his eligibility for TPS late registration; however, the applicant did not respond to that request. Therefore, the director denied the application on October 17, 2001, due to abandonment.

On November 28, 2001, the applicant filed his TPS application through his mother, [REDACTED] applicant stated that he filed his TPS application through his mother, [REDACTED] The applicant also provided a copy of his mother's Employment Authorization Document (EAD) and TPS approval notice.

The director reopened the case and requested the applicant to submit evidence to establish his eligibility for TPS late registration. On June 21, 2001, the applicant submitted some evidence in an attempt to establish his eligibility. The director denied the application again on March 31, 2003, because the applicant failed to establish his eligibility for TPS late registration. On April 28, 2003, the applicant filed the current motion to reopen which is now before the AAO.

A review of the record of proceedings also reflects that the applicant was born on January 19, 1975, and he was 23 years old, and turned 24 years old, during the initial registration period. In addition, the applicant stated on his TPS application that he was married to [REDACTED] on March 7, 1998, in Honduras.

Service regulations may allow the child of an alien currently eligible to be a TPS registrant to file an application after the initial registration period; however, section 101(b)(1) of the Act defines the term "child" as an "unmarried person under twenty-one years of age." Evidence of record reveals that the applicant was married and over 21 years of age during the initial registration period and, therefore, cannot be considered a "child" for immigration purposes. Since the applicant, during the initial registration period, was not the unmarried child of an alien currently eligible to be a TPS registrant, he is not eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv). Additionally, the applicant did not provide any evidence to establish that the applicant 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 for TPS will be affirmed.

Moreover, a review of his mother's **file**, [REDACTED] reflects that she stated on her initial TPS application filed on April 17, 1999, that the applicant was residing in Honduras. Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence and continuous residence during the requisite time periods. 8 C.F.R. § 244.2(b) and (c).

Accordingly, the application will also be denied for these reasons.

It also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. 8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

- (a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

(i) Passport;

(ii) Birth certificate accompanied by photo identification;
and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant has provided a copy of his birth certificate along with an English translation as evidence of his identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide photo identification. Therefore, the application will also be denied for this reason.

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 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.