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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER DATE: FEB 20 2008
[LIN 02 249 50937]
[REDACTED]-consolidated]
[REDACTED]-consolidated]

IN RE: Applicant: [REDACTED]

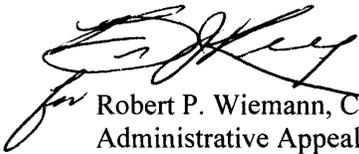
APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims 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 director denied the application because the applicant failed to establish that he was eligible for late registration.

On appeal, the applicant submits copies of documents previously submitted along with additional documents to establish his residence and physical presence in the United States.

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.

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 on March 6, 1998, a Form I-862, Notice to Appear, was served upon the applicant under the alias [REDACTED]. On April 1, 1998, a delivery bond was posted on behalf of the applicant. On May 4, 1998, a removal hearing was held and the applicant was ordered removed *in absentia* from the United States, and a Form I-205, Warrant of Removal/Deportation was issued. On May 18, 1998, a Form I-340, Notice to Deliver Alien, was served upon the obligor. On July 23, 1998, the delivery bond was declared breached by the District Director, El Paso, Texas as the obligor failed to surrender the applicant into custody on June 22, 1998. The appeal from the breach notice was rejected as untimely by the AAO on October 28, 1998.

The applicant filed his TPS application with Citizenship and Immigration Services (CIS) on July 26, 2002.

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 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 November 22, 2002, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit his birth certificate or passport and evidence establishing his qualifying physical presence in the United States since January 5, 1999. The applicant, in response, provided his birth certificate with English translation and documentation relating to his continuous residence and physical presence in the United States during the requisite periods.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on October 13, 2004.

On appeal and in response to the Request for Evidence dated November 22, 2002, the applicant has submitted sufficient evidence to establish his continuous claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, the director did not deny the application based on a failure to establish residence or physical presence in the United States. The primary basis for the denial was the applicant's failure to establish his eligibility for late registration. The applicant does not address this issue on appeal.

It is noted that a Form I-200, Warrant for Arrest of Alien, and a subsequent Form I-862 was served upon the applicant on May 14, 2007, under alien registration number [REDACTED]. On May 30, 2007, a delivery bond was posted on behalf of the applicant. During this proceeding, counsel for the applicant provided a copy of the applicant's May 12, 2005, marriage certificate and the permanent residence card of his spouse, [REDACTED], a Brazilian national.

The applicant has not met the threshold requirement for late registration under 8 C.F.R. § 244.2(f)(2)(ii) as he was not in any relief from removal that was pending or subject to further review or appeal during the initial registration period. The applicant also has not met the threshold requirement for late registration under 8 C.F.R. § 244.2(f)(2)(iv), as he was not married to an alien currently eligible to be a TPS registrant and said marriage did not occur during the initial registration period. 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 for TPS will be affirmed.

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.