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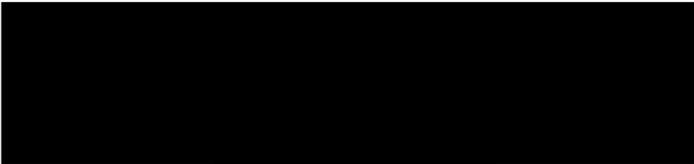
U.S. Department of Homeland Security
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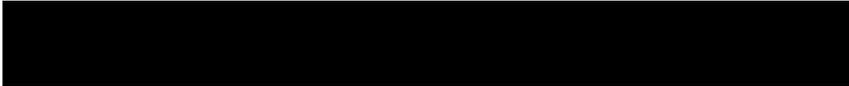
Office: California Service Center

Date: FEB 20 2008

[EAC 03 078 50594]

[WAC 05 075 75002]

IN RE:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC) denied the initial application. The Director, California Service Center (CSC) denied the re-registration application. The matter is currently 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 (the Act), 8 U.S.C. § 1254.

The director, VSC, denied the application because the applicant failed to submit evidence needed to process his application and because he failed to establish that he was eligible for late initial registration. The director, CSC, denied a subsequent re-registration application because the applicant had not previously been granted TPS.

On appeal, the applicant asserts that he is eligible for late registration because Citizenship and Immigration Services (CIS) approved two employment authorization documents for him, because he has been married to his current spouse since 1987, and because he has been continuously physically present in the United States since before December 30, 1998.

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.

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 resided continuously 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 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).

The record reflects that the applicant filed an application on June 9, 2000 – ten months after the close of the initial registration period for Hondurans. In support of his application, the applicant submitted photocopies of the following documents:

1. His birth certificate, with translation;

2. His marriage certificate, with translation, indicating that he married his wife, [REDACTED] on January 9, 1987, in El Progreso, Honduras;
3. His wife's Employment Authorization Document (EAD), indicating that she is a TPS registrant, with alien registration number [REDACTED] and,
4. His Honduran driver's license, issued on February 10, 1999, in Honduras.

The applicant did not submit any evidence of his continuous residence and continuous physical presence in the United States. On July 27, 2001, the director requested that the applicant submit evidence of his qualifying continuous residence and continuous physical presence. The director did not receive a response to that request. On May 1, 2002, the director denied the application and deemed it abandoned because the applicant failed to respond to the request for evidence. The director notified the applicant that an application denied due to abandonment could not be appealed, but, that the applicant had limited rights to a motion to reopen. The applicant did not file a motion.

On November 7, 2002, the applicant filed a subsequent application (EAC 03 078 50594). Because a final decision denying the applicant's initial application had previously been made, the director accepted the application under the late initial filing provisions of 8 C.F.R. § 244.2(f)(2). On May 16, 2003, the director requested that the applicant submit evidence establishing his eligibility for late initial registration. The director also requested that the applicant submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted photocopies of the following:

5. His marriage certificate;
6. Four of his wife's EADs, indicating that she is a TPS registrant;
7. His wife's TPS application, dated May 26, 2001;
8. His wife's TPS application, dated May 11, 2002; and,
9. Another of his wife's TPS applications, with the last page and date missing.

On July 16, 2003, the director denied the application because the applicant failed to submit evidence needed to process his TPS application and because he failed to establish that he was eligible for late initial registration.

The applicant appealed to the AAO. On June 8, 2005, the AAO remanded the case to the director because the director's July 16, 2003, decision and the applicant's Form I-821, filed on November 7, 2002, were not in the record of proceeding.

Regarding EAC 03 078 50594, the applicant has established that he was the spouse of an alien eligible to be a TPS registrant at the time he filed his initial TPS application. Therefore, the director's decision to deny the application on that ground will be withdrawn.

The application cannot be approved, however, as a late-filing spouse of a TPS-eligible applicant must meet the same continuous residence and continuous physical presence requirements as all other TPS applicants. The TPS applications of the applicant's spouse, submitted to show the applicant's presence in the United States, fail to establish the applicant's qualifying continuous residence and continuous physical presence. The last two, dated May 11, 2002, and May 26, 2001, list the applicant's address as the same as the applicant's

wife in New Jersey. In a previous application, however, the applicant's wife listed the applicant's address as [REDACTED] Honduras, which would indicate that the applicant was in Honduras at the time of designation. The applicant has never submitted any other documentation to establish that he has resided continuously in the United States since December 30, 1998, and, that he has been continuously physically present since January 5, 1999. Furthermore, the applicant has always asserted that he entered the United States in about March 1999 – two months after the qualifying physical presence date. Since the applicant did not enter the United States until about March 1999, he cannot satisfy the continuous residence and continuous physical presence requirements of 8 C.F.R. § 244.2(b) and (c). The director's decision to deny the application for TPS on these grounds will be affirmed.

Regarding the current application (WAC 05 075 75002), the record contains a letter from the director, dated July 23, 2005, denying the application and finding that the applicant was not eligible for re-registration because his initial application had not been approved. 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, he is not eligible to re-register for TPS. Accordingly, the CSC director's decision to deny the application on this ground is affirmed. The director's decision to deny the application 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.