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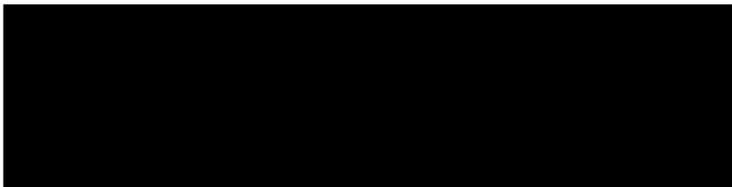
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER
[SRC 05 018 54294-initial application]
[WAC 05 055 71756-re-registration]
[EAC 07 164 50747-motion]

DATE FEB 20 2008

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned
to the California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The re-registration application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the case will be remanded for further consideration and action.

The applicant claims to be 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 indicates the applicant filed his initial TPS application on October 26, 2004, under Citizenship and Immigration (CIS) receipt number SRC0501854294. The Director, Texas Service Center, denied that application on November 8, 2004, because the applicant failed to establish his eligibility to file for late registration. The applicant's appeal from the denial of that application was dismissed on December 28, 2005, as the AAO concurred with the director's findings.

On November 24, 2004, the applicant filed this TPS application and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on July 23, 2005, because the applicant's initial TPS application had been denied and, therefore, the applicant was not eligible to apply for re-registration for TPS. The applicant's appeal from the denial of this application was dismissed on April 17, 2007, as the AAO concurred with the director's findings. The applicant subsequently filed a motion to reopen.

On motion to reopen, the applicant asserts that he is a spouse of an alien currently eligible to be a TPS registrant.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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.

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. As previously noted, the applicant filed his application with CIS on October 26, 2004.

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 motion to reopen, the applicant claims that he is a spouse of an alien currently eligible to be a TPS registrant. As evidence, the applicant provides a copy of the employment authorization card of his wife, [REDACTED], a Honduran national. The applicant also provides his Honduran marriage certificate that indicates the marriage occurred on July 26, 1994.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met his burden as he has provided sufficient evidence to overcome the previous decisions of the Director, Texas Service Center, and the AAO.

The applicant has met the threshold requirement for late registration as during the initial registration period he was a spouse of an alien currently eligible to be a TPS registrant. However, this requirement alone does not render the applicant eligible for the benefit being sought. The record does not contain sufficient evidence to establish the applicant's continuous residence *since* December 30, 1998, and his physical presence

since January 5, 1999, in the United States during the requisite periods as described in 8 C.F.R. § 244.2(b) and (c). The documents submitted only *credibly* serve to establish his residence and physical presence since 2000. Therefore, the case will be remanded in order for the director to render a full adjudication of the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

Accordingly, the motion to reopen will be granted and the previous decisions of the AAO will be withdrawn. The director's denial of the initial application will be withdrawn and the application will be remanded for a new decision. The director's denial of the application for re-registration is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion to reopen is granted. The previous decisions of the AAO and the directors are withdrawn. The initial application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.