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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER
[EAC 99 22253206 - first (initial) 1-821]
[EAC 02 251 51331 - second 1-821]
[WAC 05 102 72084 - re-registration/renewal 1-821]

Date: **JAN 09 2008**

INRE: Applicant: [REDACTED]

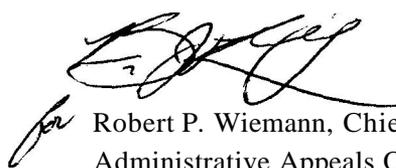
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: A first application was denied due to abandonment by the Director, Yermont Service Center (YSC). A second application was also denied by the Director, YSc. The denial of the second application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO). The decision of the director will be withdrawn, and the application will be approved. A subsequent application for re-registration was denied by the Director, California Service Center (CSC), and is currently before the AAO on appeal. The appeal from that decision will be sustained. The decision of the director will be withdrawn, and that application will be also approved.

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.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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 § 244.3;
- (e) Is not ineligible under § 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.

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 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.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she 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 must submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (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 applicant filed a first (initial) Form I-821, Application for Temporary Protected Status, with the VSC on July 6, 1999, during the initial registration period for Hondurans (EAC 99 222 53206 relates). The director of the VSC denied the application due to abandonment on October 12, 2000, after determining that the applicant had failed to respond to a request for evidence, dated December 4, 1999, to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.¹ Since the application was denied due to abandonment there was no appeal available; however, the applicant could have

¹ Both the request for evidence and the denial notice were mailed to the applicant in care of his prior attorney of record.

filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a second Form 1-821 with the VSC on July 2, 2002, after the initial registration period had ended (EAC 02 251 51331 relates). The director denied that application due to abandonment on May 19, 2003, after determining that the applicant had failed to timely respond to a request for evidence, dated November 4, 2002, to establish his eligibility for late registration.

Prior to the director's decision, the applicant, on May 14, 2003, had, in fact, submitted evidence to establish his eligibility for late registration. He also submitted documentation relating to his residence and physical presence in the United States.

The director reopened the proceeding and, on January 20, 2004, requested the applicant to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record reflects that the applicant failed to respond to the request. The director determined that the applicant had failed to establish that he satisfied the continuous residence and continuous physical presence requirements described in 8 c.P.R. § 244.2(b) and (c), and denied the application on May 12, 2004.²

The applicant filed this Ponn 1-821 with the CSC on January 20, 2005 (WAC 05 102 72084 relates), and indicated that he was re-registering for TPS or renewing his temporary treatment benefits. The director of the CSC denied the application on April 18, 2005, because the applicant's prior TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS or renewal.

A review of CIS records reflects that the applicant has submitted the following documentation to establish:

- *His nationality and identity.* The applicant has submitted photocopies of his Honduran birth certificate, with English translation, and the identification page from his Honduran passport.
- *His eligibility for late registration.* The applicant is under the age of twenty-one years and both of his parents, are aliens currently eligible to be TPS registrants.³
- *His qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.* The applicant has submitted letters from his school, school transcripts, a baptismal record, and other documentation indicating his continuous residence and continuous physical presence in the United States from 1994 to the date of filing his application for re-registration or renewal of temporary treatment benefits on January 10, 2005.

² Both the request for evidence and the denial notice were mailed to the applicant at his address of record.

³ CIS records reveal that the applicant's father, _____, was granted TPS on May 15, 2000. His mother, _____, was granted TPS on May 9, 2000. In addition, it is noted that his siblings, _____, and _____, were granted TPS on April 10, 2000, and March 22, 2000, respectively.

Based on a review of the record, it is concluded that there is sufficient evidence to establish the applicant's eligibility for TPS. Therefore, the VSC director's decision to deny the second application will be withdrawn and the application will be approved.

The ESC director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the second application is being approved, the appeal from the denial of the application for re-registration or renewal of temporary treatment benefits will be sustained. The director's denial of the application will be withdrawn, and that application will also be approved. The applicant is eligible for employment authorization under 8 C.F.R. § 274a.12(a)(12).

ORDER: The VSC director's denial, dated May 12, 2004, is reopened and withdrawn. The appeal of the ESC director's decision to deny the application for re-registration or renewal of temporary treatment benefits is sustained, and the decision of the director, dated April 18, 2005 is withdrawn. Both applications are approved.