



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **MAY 12 2008**

[WAC 08 02352061, *appeal*]  
[EAC 06 251 70418]

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and 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 reveals that the applicant filed a Form 1-821, Application for Temporary Protected Status, after the initial registration period under receipt number SRC 01 237 57233. The director denied that application on January 2, 2002, after determining that the applicant had failed to establish he was eligible for late initial registration. He then filed a Form 1-821 under receipt number WAC 05 090 77305 on December 29, 2004, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. A late appeal to the AAO was rejected on May 4, 2006.

The applicant filed the current Form 1-821 on June 8, 2006.

The VSC Director denied the application on September 26, 2007, because the applicant failed to establish he was eligible for late initial registration.

On appeal, counsel argues the applicant is eligible for late initial registration because he has an application for asylum subject to further review or appeal.

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 temporary protected status 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.F.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.

To qualify for late registration, an 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 record reflects that the applicant filed Form 1-589, Request for Asylum and for Withholding of Deportation, on May 12, 1997. On October 20, 1997, an Immigration Judge (IJ), in Miami, Florida, denied the application for asylum subject to appeal to the Executive Office for Immigration Review (EOIR), in Falls Church, Virginia. EOIR administratively closed the proceedings to provide the respondent the opportunity to apply for TPS. On September 12, 2006, based upon the Department of Homeland Security's motion to reinstate removal proceedings, EOIR determined that the applicant's asylum application should be reevaluated by the IJ. Based upon these circumstances, it is determined that the applicant was eligible for late initial registration.

The applicant has established that he has met the of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2)(iv). Therefore, the VSC Director's decision will be withdrawn and the application will be approved.

An alien applying for temporary protected status has the burden of proving that he or she meets the above requirements and is eligible under the provisions of section 244 of the Act. The applicant has met this burden.

**ORDER:** The appeal is sustained and the application is approved.