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U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[EAC 07 10070140]

Office: Vermont Service Center

Date: MAY 28 2008

INRE: Applicant: [REDACTED]

APPLICAnON: 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 Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

The record reveals that the applicant filed a late initial IPS application on July 9, 2003, under CIS receipt number EAC 03 211 54016. The Director, Vermont Service Center, denied that application on September 8, 2003, because the applicant failed to establish his eligibility for late initial registration for IPS.

A subsequent appeal from the director's decision was dismissed by the Director (now Chief) of the AAO, on October 28, 2004. The AAO affirmed the director's denial noting that the applicant had failed to establish eligibility for late initial registration for TPS. The AAO also noted that the applicant did not establish the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

The applicant filed a subsequent Form 1-821, Application for Temporary Protected Status, on January 26, 2006, under CIS receipt number WAC 06 119 70071, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application, on February 16, 2007, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. A subsequent appeal from the director's decision was dismissed by the Chief of the AAO in a separate decision issued simultaneously with this decision. The AAO affirmed the director's denial, and also noted that the applicant did not establish the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

The applicant filed the current Form 1-821, Application for Temporary Protected Status, under CIS receipt number EAC 07 10070140, and indicated that he was filing a new initial application. The Director, Vermont Service Center, denied the application, on July 20, 2007, because the applicant failed to establish eligibility for late initial registration for TPS, his continuous residence in the United States, and his continuous physical presence. The applicant filed this appeal.

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.

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 as 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.P.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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2009, upon the applicant's re-registration during the requisite period.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he/she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he/she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On appeal, the applicant states he would like the opportunity to live and work freely to support his family. The applicant does not submit any additional evidence on appeal.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for this reason must be affirmed.

Furthermore, the applicant did not submit sufficient evidence to establish that he had continuously resided in the United States since December 30, 1998, and that he had been continuously physically present since January 5, 1999. Therefore, the applicant has failed to establish the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). For these additional reasons, the director's decision to deny TPS must be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status 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.