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[REDACTED]

FILE: [REDACTED]  
[WAC 05 104 76245]

Office: CALIFORNIA SERVICE CENTER

Date: OCT 03 2008

IN RE: Applicant:

[REDACTED]

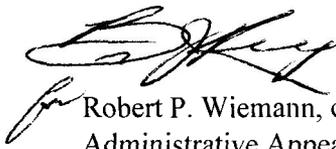
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number EAC 99 208 51701. The Vermont Service Center (VSC) director denied that application on June 30, 2000, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. It is noted that the VSC director denied the applicant's Employment Authorization [EAC 02 236 50897] on August 16, 2002. The applicant filed a motion to reopen the director's decision. The VSC director dismissed the motion on November 15, 2002.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 5, 2005, and indicated that he submitting an initial application to register for TPS.

The director treated the application as a re-registration application and denied it because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel for the applicant states that the applicant was filing a new TPS application because his wife had been granted TPS. The applicant also provides evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period.

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.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.

The term *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 term *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. 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 January 5, 2009, upon the applicant's re-registration during the requisite period.

The record reveals that the applicant did file an initial application for TPS during the initial registration period on June 14, 1999. That application was denied on June 30, 2000, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant did not file an appeal of the director's decision.

The applicant's initial Form I-821 was properly filed on June 14, 1999. That initial application was denied by the director on June 30, 2000. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

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.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed this TPS application on January 5, 2005.

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 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 record of proceeding confirms that the applicant filed this application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The director determined that the applicant filed a re-registration application and denied the application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel for the applicant states that the director erred in denying the application because the applicant was not attempting to re-register for TPS. Counsel states that the applicant filed a new application because his wife, [REDACTED] had been granted TPS. According to counsel the applicant is requesting that this application be considered as a late registration. The applicant also submits a copy of his wife's employment authorization card and his marriage certificate, with English translation, and statements from [REDACTED], and [REDACTED].

The employment authorization card and the marriage certificate indicate that the applicant is married to a TPS-eligible alien. Mr. [REDACTED] stated that he has known the applicant since December 1998 and that the applicant has worked for him since 2000. However, this statement has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the applicant's duties of employment. Mr. [REDACTED] stated that the applicant lived with him from 1996 to 1998. Mr. [REDACTED], and [REDACTED] stated that they have known the applicant since 1998. Mr. [REDACTED] stated that he has known the applicant since 1993. However, these statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

Counsel correctly pointed out that the applicant submitted a late initial registration application based on his wife being granted TPS, and not a TPS re-registration application. However, while CIS regulations may allow spouses of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. The spouse is still required to meet the continuous residence and continuous physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). The applicant has failed to establish continuous residence since December 30, 1998, and continuous physical presence from January 5, 1999. The applicant, therefore, has not submitted sufficient evidence to establish that he qualifies for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will 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.