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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 21 2004

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 office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Director
Administrative Appeals Office

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

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 director determined that the applicant failed to submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant claims that he had applied for TPS during the initial registration period, but his application had been lost. He submits evidence in support of his claim to have timely-filed an application 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.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 condition described in paragraph (f)(2) of this section.

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.

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 in the United States 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, 2005, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999.

The record reflects that the applicant filed his TPS application on July 1, 2002. He stated on the application that he entered the United States without inspection on June 26 1996. In a June 29, 2002 letter submitted with the application for TPS, the applicant stated that he had filed an application for TPS during the initial registration period but the application had apparently been lost. He stated he had no proof that he had filed the application within the initial registration period. The applicant furnished copies of a Form I-821, Application for Temporary Protected Status, and a Form I-765, Application for Employment Authorization, which had been date-stamped as received at the Vermont Service Center on June 5, 2000.

In a notice of intent to deny dated December 18, 2002, the applicant was requested to submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. In response, the applicant stated that he had filed an application for TPS during the initial registration period. but his applicant had been lost. He again stated that he did not have any proof that he had applied during the initial registration period. The applicant also stated that he was eligible for late registration because he had been "held by the INS for a couple of days" and he was released "under parole" and told to report to the local INS office. The applicant stated he did not have any of the documents that were purportedly given to him at that time. He asserted he qualifies for late registration under section 244.2(f)(iii) as an alien

who is a parolee or has a pending request for reparole. On April 23, 2003, the director determined that the applicant had not established eligibility for TPS and denied the application.

The applicant, on appeal, submits the original copies of the above-referenced TPS application forms that were received at the Vermont Service Center on June 5, 2000. In addition, the applicant submits a Receipt for Certified Mail, PS Form 3800, postmarked April 7, 1999. A typewritten label, addressed to the Vermont Service Center, is affixed to the postal receipt. The applicant claims this is proof that he had submitted a timely application for TPS. It is noted that the applicant stated on two separate occasions that he had no proof that he had filed an application for TPS during the initial registration period. At best, the postal receipt he now submits only serves to show that an article of mail may have been sent to the Vermont Service Center on April 7, 1999. There is no evidence in the record of proceeding that the applicant submitted an application for TPS during the initial registration period.

In order to qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she was either in a valid nonimmigrant status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or 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). While the applicant previously claimed that he was eligible for late filing because he had been paroled into the United States, he has not submitted any evidence in support of that claim.

The applicant has not furnished evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2), and to overcome the findings of the director. Consequently, the director's conclusion that the applicant had failed to establish eligibility for late registration will be affirmed.

The burden of proof is upon the applicant to establish that he 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.