U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 2 6 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

PUBLIC COPY

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The applicant filed an appeal which was subsequently dismissed by the Administrative Appeals Office (AA0). The matter is now before the AAO on a motion to reopen. The motion will be granted. The previous decision of the AAO will be affirmed.

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 denied the application after determining that the applicant had 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 AAO upheld the decision of the director and dismissed the applicant's appeal.

A letter indicating representation by a law firm in Massachusetts is included in the record with the motion to reopen. However, it is noted that the record does not contain a Form G-28, Notice of Entry of Appearance.

8 C.F.R. §103.2(a)(3) states, in pertinent part:

> An applicant or petitioner may be represented by an attorney in the United States ....

Further, 8 C.F.R. §292.4 states that:

> "an appearance shall be filed on the appropriate form by the attorney or representative appearing in each case .... A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.

Therefore, the applicant shall be considered to be self-represented.

On motion, the applicant states that he was not represented in his original application nor on appeal and, because he was not familiar with the required procedures, he submitted incomplete evidence. The applicant claims that he is a nonimmigrant and is, therefore, eligible for late registration as provided by 8 C.F.R. 244.2(f)(2).

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 condition 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.

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 current extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time 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).

On motion, the applicant maintains that he is eligible for TPS because he is a nonimmigrant. He submits copies of pages from his Honduran passport which reflect that he last entered the United States on December 28, 1998 with a C1/D visa. However, in order to qualify for late registration as a nonimmigrant, an applicant must provide evidence that, at the time of the initial registration period of January 5, 1999 through August 20, 1999, he was, among other criteria listed above, in a valid nonimmigrant status. If the qualifying condition has expired or been terminated, the individual must file an application for TPS within 60 days of the expiration or termination of the qualifying condition in order to be considered for late initial registration. The applicant has not shown that he maintained status as a nonimmigrant through August 20, 1999. Furthermore, the applicant has not shown that he filed an application for late registration with the appropriate CIS office within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section. 8 C.F.R. 244.2(3)(g). The applicant filed his first TPS application on May 7, 2002. In this case, the evidence submitted does not establish that the applicant has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the AAO director's decision on appeal 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 previous decision of the AAO is affirmed.