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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

MAR 29 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

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, 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, counsel states that the applicant had a case pending prior to the initial registration period. Counsel submits copies of a Form I-797C, Receipt Notice, dated January 30, 2001, and a copy of the applicant's employment authorization card for the period July 6, 2001 to July 5 2002.

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 record reflects that the applicant filed his TPS application on December 7, 2000. On July 31, 2001 the applicant was requested to submit: (1) evidence to show that he has continuously resided in the United States since December 30, 1998; (2) evidence to show that he has been continuously physically present in the United States since January 5, 1999; and (3) evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The applicant was granted 12 weeks to submit the requested evidence, however, the record does not reflect that the applicant responded to the notice within the allotted timeframe. On February 7, 2002, the applicant was again requested to submit evidence to establish eligibility for late registration. Because the applicant's response did not contain all of the requested information, the director denied the application.

Aliens applying under the provisions for late initial registration must prove that they are eligible because during the initial registration period of January 5, 1999 through August 20, 1999, they fell within the provisions described in paragraph (f)(2) above.

On appeal, counsel states that the applicant had a case pending prior to the initial registration period. Counsel did not provide any details concerning the alleged case. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

It is noted that the record contains a June 21, 2000 letter from counsel, addressed to the Eastern Service Center, in which he stated that the applicant was "applying late due to the fact that he was not aware of the existence of the

Temporary Protected Status Program. [The applicant] came to my office in order to find a way to change his status. Then I explained to him the benefits of this program and he decided to send the application."

In order to qualify for late registration, an applicant must provide evidence that during the initial registration period of January 5, 1999 to August 20, 1999, he or she was either in a valid immigration 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 paragraph f)(2) above.

Based on documentation in the record and evidence submitted on appeal, it is concluded that the applicant has failed to furnish evidence to establish that he met the qualification for late registration, and to overcome the findings of the director pursuant to 8 C.F.R. § 244.2(f)(2).

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.