U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 28 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 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 comply to his request to submit additional evidence to establish continuous residence and continuous physical presence in the United States, and 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 states that he did register during the initial registration period, on July 28, 1999, and that he also re-registered on every occasion and/or every year. He further states that he did receive the letters from the Service requesting more evidence, but at that time, the person who was helping him with his application told him to instead submit another application. The applicant submits additional evidence.

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 § 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.

The term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. 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.

The term *continuously physically present* as used in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since January 5, 1999. 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.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant did file an initial application for TPS during the initial registration period, on July 28, 1999. That application was denied on May 1, 2001, for failure to respond to a request for evidence to establish his eligibility for TPS. Since the application was denied due to abandonment, there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days of the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 18, 2001. The director denied this second application because it was filed outside of the initial registration period, and because the applicant failed to establish residence and continuous physical presence in the United States. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on July 28, 1999. That initial application was denied by the director on May 1, 2001. 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 applicant filed a subsequent Form I-821 on September 18, 2001. Since the initial application was denied on May 1, 2001, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

The TPS application, filed on September 18, 2001, is the subject for the appeal in this case. In a notice of intent to deny the application, the applicant was requested on October 18, 2002, to provide evidence of continuous residence, continuous physical presence, and evidence that during the registration period from January 5, 1999 through August 20, 1999, he met the requirements for late registration. Because the applicant had not submitted sufficient evidence as requested, the director denied the application on April 15, 2003.

Aliens applying under the provisions for late initial registration must provide evidence to 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 8 C.F.R. § 244.2(f)(2) (listed above).

The applicant claims, on appeal, that he filed a new application instead of responding to the director's earlier requests for evidence, based on the advice of the person who was helping him with his application. The record, however, reflects that the new TPS application, including supporting documentation, was filed on September 18, 2001, approximately twelve months after the director's September 8, 2000 request for evidence relating to his first application.

In an attempt to establish his qualifying residence and physical presence in the United States, the applicant, on appeal, submits affidavits from three acquaintances. These affidavits, however, are unsupported by any documentary evidence to establish the applicant's claim of continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Furthermore, this evidence does not mitigate the applicant's failure to file his TPS application within the initial registration period. The applicant has not submitted <u>any</u> evidence to establish that he has met <u>any</u> of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.