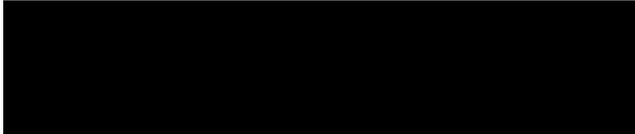


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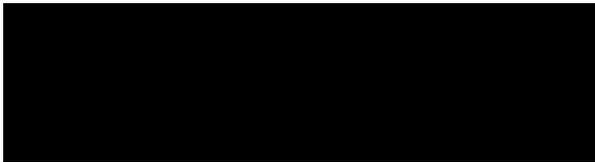
JUN 01 2006

FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 05 064 71488]

IN RE: Applicant: 

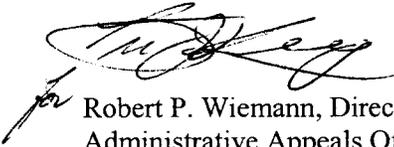
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, 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 record reveals that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 99 230 50438. The director denied that application on December 1, 2000, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting. The applicant did not file a motion to reopen within 30 days from the date of the denial. The applicant subsequently filed a TPS application on June 12, 2000, under CIS receipt number WAC 00 263 51288. The director also denied that application based on abandonment on June 25, 2001, because the applicant failed to respond to a request to submit: (1) evidence of his nationality and identity; and (2) evidence to establish his qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 3, 2004, and indicated that he was re-registering for TPS.

The director denied the re-registration 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 asserts that the applicant was previously granted TPS. He submits a copy of the applicant's Employment Authorization Card (EAD) to support his assertion.

The fact that the applicant was issued EAD is not evidence that he was approved TPS. Based upon filing of the I-821 application for TPS, the applicant was afforded temporary treatment benefits and was issued EAD upon establishing *prima facie* eligibility¹ for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

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.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

¹ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

- (f) (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 initial registration period Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current application with CIS on December 3, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

The record of proceeding indicates that on August 19, 1998, the applicant was arrested and charged with robbery, 211 PC, a felony. He was tried at the Orange County Juvenile Court, California, on September 28, 1998, and was found guilty of the offense. He was ordered committed to the California Youth Authority (CYA) for 5 years. The Federal Bureau of Investigation fingerprint results report shows that on August 12, 2001, the applicant escaped from the CYA. While it appears that the applicant was tried as a juvenile in a juvenile court, the record, however, does not contain the actual final court disposition of this arrest. Nor is the final court disposition of the applicant's charges for his escape from the CYA included in the record. CIS must address these arrests and/or convictions in any future decisions or proceedings.

It is noted that on November 1, 2001, in Los Angeles, California, the Immigration Judge administratively closed removal proceedings.

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.