



U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAR 27 2006**

[WAC 05 081 74667]

IN RE:

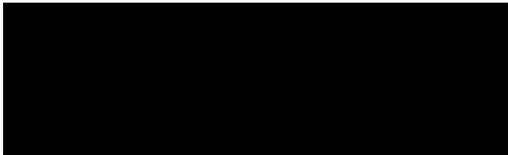
Applicant:



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 (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the applicant's application for re-registration, under section 244 of the Act, because the applicant's initial TPS application had been denied.

On appeal, the applicant provides a brief statement.

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 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 conditions described in paragraph (f)(2) of this section.

The issue in this proceeding is whether the applicant is eligible to file for re-registration under section 244 of the Act.

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 July 5, 2006, upon the applicant's re-registration during the requisite time period.

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 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 own statements. 8 C.F.R. § 244.9(b).

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed his initial application with Citizenship and Immigration Services (CIS), on July 14, 1999. That application was denied on February 21, 2002, for abandonment as the applicant failed to appear for fingerprinting. The applicant was advised that he could file a motion to reopen under 8 C.F.R. 103.5.

The applicant did not file a motion.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 15, 2003, after the initial registration period had ended. The applicant indicated that it was his first application to register for TPS.

In a notice of intent to deny, dated February 2, 2004, the applicant was requested to submit evidence to establish his eligibility for late registration.

The director, in a decision dated July 1, 2004, states in pertinent part, the following:

On February 2, 2004 we sent you a letter of intent to deny requesting you to show that you are eligible to take advantage of the late initial filing provisions of TPS regulations. We received your response to our letter of intent to deny on February 28, 2004. Your letter states that the evidence you submitted with your response proves you had a Form I-821 filed during the initial filing period. The Service is aware of the Form I-821 filed during the initial filing period, however, this does not qualify you to file under the late initial filing provisions of TPS regulations.

You have failed to establish that you are eligible to take advantage of the late registration provisions of the Temporary Protected Status regulation.

Your application for Temporary Protected Status (Form I-821) is denied.

The director denied this second application because it was filed outside of the initial registration period, and the applicant had failed to establish his eligibility for filing under the provisions of late registration. 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 the denial.

The applicant's initial Form I-821 was properly filed. That initial application was denied by the director on February 21, 2002. 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 15, 2003. Since the initial application was denied on February 21, 2002, the subsequent application cannot be considered as re-registration. Therefore, this application can only be considered as late registration.

The applicant was given 30 days to file an appeal.

The applicant did not file an appeal.

The applicant filed a subsequent Form I-821 on December 20, 2005. The applicant indicated on this Form I-821 application that he was re-registering for TPS. As previously stated, any Form I-821 application subsequently submitted by the same applicant after an initial TPS 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.

Also as previously stated, 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.

Since the initial TPS application was denied on February 21, 2002, and a second TPS application was denied July 1, 2004, the subsequent application filed on December 20, 2005, cannot be considered as a re-registration. Consequently, the applicant is not eligible to file for re-registration under section 244 of the Act. Therefore, the director's decision to deny the application on this ground will be affirmed.

Beyond the decision of the director, the applicant has provided insufficient evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. Therefore, the application must also be denied for these additional reasons.

It is noted that the record of proceeding contains the Federal Bureau of Investigation fingerprint results report indicating the applicant was arrested in Hyattsville, Maryland on October 21, 2001, and charged with (1) Disorderly Conduct and (2) 2nd Degree Assault. CIS must address this arrest and/or conviction(s) in any future decisions or 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.