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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 15 2007

[WAC 05 104 82171]

[WAC 03 041 55590]

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, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center (CSC). The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO), and the application will be approved. A subsequent application for re-registration was denied by the Director, CSC, and is currently before the AAO on appeal. The appeal will be sustained and the application will be approved.

The applicant is a 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 applicant filed his initial TPS application on October 10, 2002, under Citizenship and Immigration Services (CIS) receipt number WAC 03 041 55590. The director denied that application on July 29, 2003, because he found that the applicant failed to establish his eligibility for late initial registration.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 12, 2005, and indicated on his Form I-821 that he was applying for annual re-registration.

The director denied the re-registration application on July 8, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration.

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.

On appeal, counsel for the applicant asserts that the applicant qualifies for late initial registration because he had an asylum application pending during the initial registration period for Hondurans.

In this case, the applicant has not previously been granted TPS. However, a review of the entire record of proceeding reveals that the applicant's initial TPS application was improperly denied.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

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 since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service (INS), now CIS, on October 10, 2002.

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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On March 27, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his

identity and nationality. Counsel for the applicant, in response, provided a photocopy of the applicant's Honduran birth certificate with English translation.

The director determined that the applicant had failed to establish his eligibility for late initial registration and denied the application.

On appeal, counsel states that the applicant qualifies for late initial registration because he had an asylum application pending during the initial registration period.

The record reveals that the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, with INS on March 22, 1997. The asylum application was denied on January 6, 1998, and the applicant was referred for a removal hearing before an Immigration Judge.

On March 16, 1998, the applicant filed a form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. On August 30, 2000, in a hearing before an Immigration Judge in Los Angeles, California, the applicant withdrew his applications for asylum and for withholding of removal. The Immigration Judge denied the applicant's application for cancellation of removal and granted the applicant voluntary departure in lieu of removal [deportation] from the United States on or before August 30, 2000, with an alternate order of removal if the applicant failed to depart the United States in compliance with the grant of voluntary departure.

On August 22, 2000, counsel for the applicant filed an appeal from the Immigration Judge's order denying the application for cancellation of removal with the Board of Immigration Appeals (BIA). On August 20, 2002, the BIA administratively closed the proceedings to allow the applicant to apply for TPS. The applicant filed his initial Form I-821 on October 10, 2002, within 60 days of the termination of the applicant's applications for asylum and for cancellation of removal. Therefore, it is concluded that the applicant is qualified for late initial registration.

The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. Therefore, the director's decision will be withdrawn and the initial application will be approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved. The applicant is eligible for employment authorization under 8 C.F.R. § 274a.12(a)(12).

ORDER: The director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.