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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date:

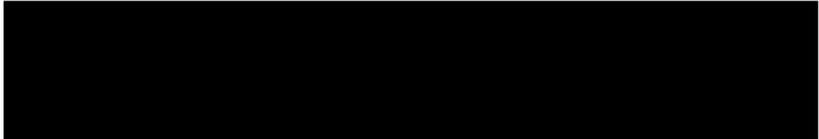
NOV 26 2007

[WAC 05 053 73683]

[EAC 07 154 50703 – motion]

IN RE:

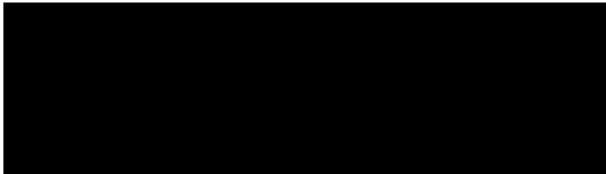
Applicant:



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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). A subsequent appeal was dismissed by the Director, now Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen 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 denied the application on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

A subsequent appeal from the director's decision was dismissed on April 4, 2007, after the AAO also concluded that the applicant was not eligible to re-register for TPS. In addition, the AAO determined that the applicant failed to show that the current application should be accepted as a late initial registration, and did not establish his nationality and identity.

On May 1, 2007, the applicant submitted a motion to reopen, asserting that he has lived in the United States since 1998, and that he has answered all the requests from Citizenship and Immigration Services (CIS). The applicant also submitted additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.

The phrase *continuously physically present*, as defined in 8 C.F.R. § 244.1, 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.

The phrase *continuously resided*, as defined in 8 C.F.R. § 244.1, 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 since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he satisfied 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 record shows that the applicant filed an initial TPS application [SRC 02 114 55110] with the Texas Service Center (TSC) on February 26, 2002, after the initial registration period had closed. The TSC director denied that application on November 19, 2002, due to abandonment because the applicant failed to respond to a request for evidence in order to establish his eligibility for TPS late registration.¹ The applicant filed his second TPS application with the CSC [WAC 05 053 73683], on November 22, 2004, likewise after the initial registration period had closed. This is the application currently before the AAO on a motion to reopen.

The applicant states, in his motion, that he entered the United States in 1998, and that he has answered all requests for documentation from CIS. The applicant also submits the following evidence: a copy of a receipt notice from CIS dated June 6, 2006; a copy of the birth certificate of his daughter, born on July 10, 2004; a copy of the biographical page of his Honduran passport; a copy of the birth certificate of his son, born on September 2, 2002; copies of his Internal Revenue Service (IRS), Form W-2, Wage and Earnings Summary, for the year 2005; a copy of a letter from the Bank of America; a copy of a receipt dated February 1, 2005, from Townecraft; a copy of an invoice dated August 2, 2004, from the Ft. Lauderdale Health Clinic; and, copies of cash register and money order receipts from various merchants which do not bear any name.

The evidence of record establishes the applicant's nationality and identity. Accordingly, the applicant has overcome this ground for the AAO's denial of his application. The applicant has failed to submit any evidence, however, to establish that he meets any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Thus, the applicant has not overcome this ground for the denial of his application.

Furthermore, the AAO determines that the applicant has not submitted sufficient credible 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, as required for TPS applications from Honduras under 8 C.F.R. § 244.2 (b) and (c). On these additional grounds, the application cannot be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided sufficient new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

It is noted that the applicant was ordered removed *in absentia* by an Immigration Judge at Harlingen, Texas, on September 22, 1999, under file number, [REDACTED]. On September 30, 1999, a Warrant of Removal was issued, which is still outstanding.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated April 4, 2007, is affirmed.

¹ A motion to reopen was dismissed by the TSC director on December 13, 2005.