



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: California Service Center

Date:

SEP 04 2007

[WAC 05 060 75400]

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 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 stated to be 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 record reveals that the applicant submitted a late initial TPS application on June 27, 2002, under CIS receipt number SRC 02 210 55896. The Director, Texas Service Center, denied the application for abandonment, on May 23, 2003, because the applicant failed to respond to an April 15, 2003 request to submit evidence to establish his eligibility for late initial registration, his continuous residence and his continuous physical presence in the United States, and a photo-identification. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record reflects that the applicant filed a late motion to reopen or reconsider, in December 2003, which the director denied, as untimely, on March 26, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on June 29, 2004, under CIS receipt number WAC 05 060 75400, and indicated that he was re-registering for TPS. The director, California Service Center, categorized the application as a late initial registration, and denied that application on September 6, 2006, because the applicant failed to establish that he was eligible for late initial registration for TPS.

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. 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 January 5, 2009, upon the applicant's re-registration during the requisite period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she 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).

On appeal, counsel asserts that the applicant is eligible for late initial registration as the beneficiary of a pending Form I-130, Petition for Alien Relative, filed by his spouse, a United States citizen, and an Application for Adjustment of Status, Form I-485. Counsel also asserts that the applicant also had a Motion to Reopen a removal order pending before the Board of Immigration Appeals (BIA). With his appeal, counsel submits documentation, including tax returns, correspondences and CIS notices.

The AAO notes that the record of proceedings indicates that the applicant had an approved Form I-130 Petition for Alien Spouse, and a Form I-485, Application for Adjustment of Status. However, both the I-130, and the I-485 were terminated on November 28, 2000. In order to be eligible for late initial registration, the applicant would have had to have filed the TPS application within 60 days of the date of the termination, in this case, by January 28, 2001. The applicant did not file for TPS until June 27, 2002. The applicant is, therefore, not eligible to file for late initial registration for TPS.

Also, the applicant is not eligible for late initial registration for TPS on the basis of a Motion to Reopen the removal order. The record of proceedings indicates that on May 21, 1996, the applicant was apprehended on entry by the Border Patrol at Rio Rico, Arizona, was placed in deportation proceedings, and ordered deported, *in absentia*, to Mexico, on November 5, 1996, by an Immigration Judge. On July 8, 2002, the applicant, through his Counsel filed a motion to reopen the deportation proceeding was dismissed by the EOIR on July 26, 2002. The immigration judge reaffirmed the November 5, 1996 Order of Deportation to Mexico. A subsequent motion to reconsider to the Board of Immigration Appeals was denied the by the BIA on December 6, 2002. It is noted, however, that contrary to counsel's assertion the initial TPS application was not filed while a motion to reconsider before BIA was still pending, or within 60 days after the BIA denied the motion to reconsider.

It is noted that although on June 27, 2002, the Director, Texas Service Center, initially rejected the initial TPS application because the application was not accompanied by the proper filing fee, the director application was subsequently accepted the application. Contrary to counsels assertion, there is indication that the applicant submitted (or re-submitted) a TPS application while the motion to reconsider before BIA was still pending, or within 60 days after the BIA denied the motion to reconsider. The current TPS application was not filed with the California Service Center until June 29, 2004, over 18 months later.

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the record indicates, on his entry into the United States, the applicant stated that he was a national and citizen of Mexico. However, the applicant now claims to be a national and citizen of Honduras. Although the applicant submitted documentation, including a photocopy of a Honduran birth certificate and the biographic page of a Honduran passport, the applicant has not submitted any explanation to address the discrepancies pertaining to his nationality and his identity in the record. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record pertaining to his identity and his nationality. For this additional reason, the application must be denied.

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.