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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: California Service Center

Date:

JUL 24 2007

[consolidated herein]

[WAC 05 077 76932]

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 case will be remanded to the director for further action.

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 filed a late initial TPS application on May 21, 2003, under CIS receipt number SRC 03 164 56265. The Director, Texas Service Center, denied the application on December 30, 2003, because the applicant failed to submit sufficient evidence to establish eligibility for late initial registration for TPS. On January 27, 2004, the applicant filed an appeal from the denial decision. The Chief of the AAO is dismissing that appeal under separate cover because the applicant failed to establish his eligibility for TPS.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 16, 2004, under CIS receipt number WAC 05 077 76932, and indicated that he was re-registering for TPS. The director, California Service Center, denied that application on July 23, 2005, 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, the applicant states that his Form I-821 has not been denied. In support of the appeal, the applicant submits a photocopy of his Employment Authorization document (EAD) issued under Category A12, with validity from July 8, 2005 through October 5, 2005.

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's EAD card reflects that it was issued under Category A12, reserved for those whose TPS applications have been approved, and not Category C19, reserved for those with pending TPS applications that are entitled to temporary treatment benefits. Because the applicant had filed an appeal from the denial of his TPS application that was still pending, he was entitled to receive temporary treatment benefits during that period. However, review of the entire record reveals that the applicant does not have an approved Form I-821, and therefore, the issuance of an EAD card under Category A12 was made in error.

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 who is a national of a foreign state as 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.

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.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed this TPS application with CIS, on December 16, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 reflects that the applicant had a pending asylum application that was submitted in 1992. The record indicates that the applicant was scheduled for an interview on August 6, 1992, but that the interview was cancelled due to Hurricane Andrew. Although the notice informed the applicant that another interview date would be scheduled with notification by mail, the record only reflects that the applicant's asylum application was then terminated on September 19, 1992, due to lack of prosecution. The record reflects that the applicant continued to receive employment authorization under Category C08, as an alien with a pending asylum application, through July 11, 2002. The record does not reflect any attempt to reschedule the applicant for an asylum interview after the Service cancelled his appointment. In addition, because the applicant continued to receive employment authorization under Category C08, it created a reasonable assumption on his part that he qualified for late initial registration under provisions of 8 C.F.R. § 244.2(f)(2)(ii).

It is noted that the record contains a Form I-213, Record of Deportable Alien, issued on January 26, 1994, after the applicant was encountered by Immigration Officers at a routine patrol/traffic operation. The applicant was given a Form I-210, Voluntary Departure Notice, issued by the Chief Patrol Agent, with departure to be affected on or before February 25, 1994.

In addition, it is also noted that the applicant established his date of entry into the United States prior to December 30, 1998. However, he has also submitted a Honduran national identity document issued to him in Honduras on October 19, 2001.

It is further noted that the record reflects the following arrests:

1. The applicant was arrested by the Metro-Dade Police Department on July 1, 1995, and charged with "DUI;" and "Hit and Run-Prop Dam."
2. The applicant was arrested by the Metro-Dade Police Department on August 26, 1995 and charged with "DUI."
3. The applicant was arrested by the Miami Police Department on August 25, 2005 and charged with two counts of "BW Driving Under the Influence;" and "Nonmoving Traffic Violation-No Valid Drivers License."

Therefore, the case will be remanded to the director for further adjudication of the application, and to accord the applicant an opportunity to submit additional evidence addressing the above.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.