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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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FILE:



Office: TEXAS SERVICE CENTER

Date:

APR 07 2005

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal 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 because the applicant had failed to establish that he was eligible for late registration.

On appeal, the applicant submits a statement. While the applicant indicates that he is sending a brief and/or evidence within 30 days, to date, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

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

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed his TPS application on July 3, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed 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 Citizenship and Immigration Services (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).

In a notice of intent to deny dated September 24, 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, in response, provided evidence of his continuous residence and continuous physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on November 3, 2003.

On appeal, the applicant states that he was married to a United States citizen and was subsequently divorced in 1998; however, he is unsure of his immigration standing during the time of initial registration.

The record shows that the applicant was admitted to the United States on April 4, 1990, as a D-2 (nonimmigrant crewman departing on vessel other than one of arrival). On May 19, 1993, he married a United States citizen. An Application to Register Permanent Residence or Adjust Status, Form I-485, filed on November 29, 1994, was subsequently approved on February 27, 1995, and the applicant's status was adjusted to that of a CR-6 (conditional permanent resident status). The record does not contain evidence to show that the applicant applied for removal of the conditional basis of lawful permanent resident status within the ninety days immediately preceding the second anniversary of the granting of his status. However, pursuant to 8 C.F.R. § 216.2, failure to apply for removal of the conditions will result in automatic termination of the alien's lawful status in the United States. On May 1, 1998, the applicant was divorced from his U.S. citizen spouse. While it appears that the qualifying conditions, described in 8 C.F.R. § 244.2(f)(2), may have expired or terminated on May 1, 1998, this event occurred approximately eight months prior to the initial registration period of January 5, 1999 through August 20, 1999. Therefore, the applicant does not fall within the provisions described in 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g).

The applicant has submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. 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, the Federal Bureau of Investigation (FBI) fingerprint results report and the Florida Criminal History report, contained in the record of proceedings, reveal the following offenses:

- (1) The Florida Criminal History report shows that on April 13, 1990, in Dade County, Florida, the applicant was arrested for Count 1, armed robbery; Count 2, aggravated assault-weapon; Count 3, aggravated assault-weapon; Count 4, resisting an officer without violence; and Count 5, grand larceny. The report shows that the applicant was subsequently convicted of Counts 1 and 2.
- (2) The FBI report shows that on October 13, 1996, in Beaufort, South Carolina, the applicant was arrested for criminal domestic violence. The report shows that the applicant was convicted of this offense.
- (3) The FBI report shows that on March 9, 1999, in Beaufort, South Carolina, the applicant was arrested for criminal domestic violence.
- (4) The FBI report shows that on August 25, 2001, in Dalton, Georgia, the applicant was arrested for Count 1, driving under the influence of alcohol; and Count 2, Cocaine-possess/sell/purchase/manufacture. The report shows that the applicant was convicted of both Counts 1 and 2.
- (5) The FBI report shows that on January 26, 2002, in Beaufort, South Carolina, the applicant was arrested for driving under the influence (name used: [REDACTED]). The report shows that the applicant was convicted of this offense.
- (6) The FBI report shows that on January 31, 2002, in Beaufort, South Carolina, the applicant was arrested for criminal domestic violence (name used: [REDACTED]).

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. *See* Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

These criminal offenses, detailed in Nos. 1 to 6 above, may render the applicant ineligible for TPS under section 244(c)(2)(B)(i) of the Act, and inadmissible to the United States under sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), 212(a)(2)(B), and 212(a)(2)(C) of the Act. However, the actual court dispositions of these offenses are not contained in the record of proceedings, nor is there evidence in the record that the applicant was requested to submit the court's final dispositions of all his arrests. CIS must address these arrests and/or convictions in any future decisions and proceedings.

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.