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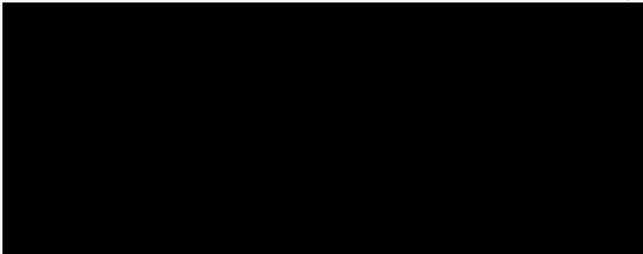
Applicant:



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


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is applying for 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 failed to establish that he was eligible for late registration.

On appeal, the applicant requests that his TPS application be reconsidered.

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 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.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 in the United States 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.

As stated in 8 C.F.R. § 244.1 "register" means "to properly file, with the director, a completed application with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

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 own statements. 8 C.F.R. § 244.9(b).

The applicant states that he filed his "first" TPS application on May 12, 2000. The record reflects that the applicant filed his initial application with the Immigration and Naturalization Service now Citizenship and Immigration Services (CIS), on May 15, 2000. The record also reflects that in a Form I-797, Notice of Action, dated September 15, 2000, the applicant was advised that if he wished consideration under the "provisions for late initial registration," the following conditions would have to exist:

1. If at the time of the initial registration period, which ended on August 20, 1999, you:

Were a nonimmigrant or were granted voluntary departure or relief from removal;

Had an application for change of status, adjustment of status, voluntary departure, or relief from removal, which is pending or subject to further review or appeal;

Were a parolee or had a pending request for parole;

You were, and remain, a spouse or child of an alien currently eligible for TPS.

2. If you filed an application for late registration within the 60-day period immediately following the expiration or termination of any of the conditions described above.

The applicant was further advised that if he met one of the conditions described above, "please resubmit your application, with the required evidence, to the address listed below."

The record contains no response from the applicant to demonstrate that he met any of the above-mentioned criteria to establish eligibility for late initial registration. The record does contain a letter from the applicant in which he states that he does not know why his TPS application dated "May 12, 2000" was denied because he "sent enough proof that I was eligible for the TPS."

The applicant filed another TPS application on May 28, 2002. On September 17, 2002, in a Notice of Action (Form I-797), the applicant was advised that if he wished to be considered for "TPS under the late initial registration provisions," he must establish that he meets one of the four criteria as mentioned above. In response, the applicant stated that he qualified as he had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review. Nevertheless, the applicant failed to submit any documentation to substantiate his claim. On November 15, 2002, the director denied the TPS application because the applicant failed to submit evidence to demonstrate his eligibility for late registration provisions. The director advised the applicant that an appeal of his decision could be filed within 30 days from

the date of the denial notice. The director also advised the applicant that if no appeal was filed, his "decision is final." The record contains no evidence of an appeal filed by the applicant.

The applicant filed this TPS application on June 21, 2003, after the initial eligibility to file for late registration had closed.

The issue raised by the director to be addressed in this proceeding is whether the applicant has established his eligibility to file for late registration.

As previously stated, to qualify for late registration, the applicant must provide evidence that during the initial registration period, he 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 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).

In a notice of intent to deny, dated August 20, 2003, the applicant was advised to submit evidence to demonstrate his eligibility for late registration. The applicant was also advised to submit evidence of his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

The director found that the applicant, in response to the notice of intent to deny "provided the requested documentation for your TPS 'Residence & Presence.' However, you failed to establish TPS LIF (Late Initial Filing) eligibility ground (classified in any non-immigrant status or had any relief of removal) during the initial registration period." The director denied the application of February 3, 2004.

On appeal, the applicant states that he is providing a copy of his identification from Florida issued on December 17, 1998, which is the only proof he has from 1998. The applicant also submits copies of documentation previously submitted. The applicant provided no additional documentary 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 although the director indicates that the applicant has "provided the requested documentation for your TPS Residence & Presence," the director did not determine if these documents were sufficient in establishing that the applicant had been continuously residing in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999. In review, the majority of the documentation contained in the record and resubmitted on appeal are not substantial enough to demonstrate the applicant's day-to-day living in the United States from the onset of the requisite timeframes to the filing date of his application. The applicant has not met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2 (b) and (c). Therefore, the application must also be denied for these reasons.

An alien applying for TPS 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.