



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

M1

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

DEC 07 2005

[WAC 05 098 77621]

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: 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC) 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 applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director noted that the applicant's prior Form I-821, Application for Temporary Protected Status, had been denied because he had not established prima facie eligibility for late registration. The director determined that since the initial application for TPS had not been granted, the applicant was ineligible for re-registration.

On appeal, the applicant states that he has been living in this country since 1998. The applicant explains that he wants to live in this country in a legal status and that he has never been in any kind of trouble or stopped by any official of the USCIS. The applicant provides additional documentation in support of his claim.

As stated in the regulations at 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."

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. The record reflects that the applicant filed his first Form I-821, Application for Temporary Protected Status, on July 5, 2002, after the initial registration period with the Director, Texas Service Center (TSC). The TSC director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 21, 2003. An appeal that was filed on May 13, 2003, was rejected as a late filing. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits.

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 filed this Form I-821 with the CSC on June 29, 2005. Since the initial application was denied on March 21, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

Section 244(c) of the Act, and the related regulations at 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.

To qualify for late registration, an 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On appeal, the applicant 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 an approvable Application for TPS within the initial registration period. Evidence of a denied application, even one timely submitted, does not constitute a registration during an initial period or excuse the lateness of an applicant's subsequent submission. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

It is noted that on October 28, 2004, a Form I-862, Notice to Appear, was issued to the applicant ordering him to appear for a hearing before an Immigration Judge on a date and time "to be set."

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.