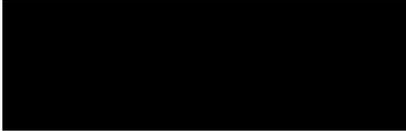




U.S. Citizenship
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Services

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JUN 06 2005

FILE:



Office: VERMONT SERVICE CENTER

Date:

[EAC 03 183 52116]

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:



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 initial application for Temporary Protected Status (TPS) was denied on January 2, 2002, by the Director, Vermont Service Center. The applicant re-filed for TPS on May 27, 2003. On September 9, 2003, the application was denied by the director, 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 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 he was eligible for late registration.

On appeal, counsel provides a brief statement. Counsel indicates that he is not submitting a separate brief or evidence.

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 record reveals that the applicant did file an initial application for TPS during the initial registration period. The director denied that application on January 2, 2002, for abandonment. The director advised the applicant that a denial due to abandonment may not be appealed. The director also advised that the applicant could file a motion to reopen a petition or application denied due to abandonment with evidence that the decision was in error because:

1. The requested evidence was not material to the issue of eligibility;
2. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
3. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The applicant was given until February 4, 2002, to file a motion. The applicant did not file a motion to reopen or reconsider.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status on May 27, 2003. The director denied this second application because it was filed outside of the initial registration period, and the applicant had failed to establish his eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for the denial.

The applicant's initial Form I-821 was properly filed. That initial application was denied by the director on January 2, 2002. 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 a subsequent Form I-821 on May 27, 2003. Since the initial application was denied on January 2, 2002, the subsequent application cannot be considered as re-registration. Therefore, this application can only be considered as late 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 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.

The issue raised by the acting director to be addressed in this proceeding is whether the applicant is eligible for late registration.

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 reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 7, 2000. The initial application was denied for abandonment on January 2, 2002. The applicant re-filed his application for TPS on May 27, 2003.

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/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).

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 of proceedings confirms that the applicant re-filed his TPS application after the initial registration period had closed. In a notice of intent to deny, dated July 1, 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 was also requested to submit evidence of his continuous physical presence in the United States since January 5, 1999.

The director found that the applicant, in his response to the notice of intent to deny, submitted "additional documents to address residence and physical presence. However, you have not submitted any proof that you are eligible to file for TPS under the late initial registration provisions." The director denied the application on September 9, 2003.

On appeal, counsel states that the Service's decision to deny the applicant's TPS application was arbitrary and capricious. Counsel contends that the applicant was unable to gather all the required evidence due to lack of identification that would have made it easier for the applicant to have access to such proof. Counsel also states that without the initial documents, "the applicant was unable to meet his burden and thereby submitted what he had." In conclusion, counsel contends that the Service "abused its discretion in denying the applicant's TPS application and thus this appeal should be sustained."

The applicant has provided no additional documentary evidence on appeal to demonstrate his eligibility for late registration. Consequently, the applicant has not established that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the initial TPS application was filed on July 7, 2000, also after the registration period for Hondurans. In order to be eligible for late registration, the applicant must file the application for late registration within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The applicant was ordered removed from the United States on December 29, 1998. The applicant had until January 27, 1999 to appeal the Order of the Immigration Judge. The applicant's former counsel reserved the applicant's right to appeal; however, the record does not reflect that an appeal was filed.

While the applicant's former counsel stated in a July 5, 2000 letter submitted with the initial TPS application, that the applicant had not been informed of "TPS benefits," the record contains the applicant's copy of Form I-220A, Order of Release on Recognizance, provided by former counsel, which states that the applicant "received written notice of TPS eligibility, benefits and filing procedures" on January 28, 1999. In this case, the applicant had until March 2, 1999 to file for TPS. The applicant did not file his TPS application until July 7, 2000. Therefore, the applicant has not demonstrated that he is eligible for late registration.

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.