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U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[EAC 05 078 30394]

Office: VERMONT SERVICE CENTER

Date: JUN 08 2005

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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, apparently denied the application on July 16, 2003. An appeal of that decision, filed on July 31, 2003, is now before the Administrative Appeals Office (AAO). The decision of the director will be withdrawn and the case will be remanded to the director for further action and consideration.

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.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

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

The record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on June 9, 2000. On July 27, 2001, the applicant was requested to submit evidence in connection with that application to establish his qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond to the request for evidence.

The director denied the applicant's first Form I-821 on May 1, 2002, due to abandonment. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request

for a motion to reopen within 30 days from the date of the director's denial. The applicant did not file a motion to reopen during the requisite timeframe.

The record of proceeding, as it is presently constituted, reflects that the applicant subsequently submitted applications for annual registration¹ on June 1, 2001; May 18, 2002; and, May 6, 2003.

However, it is noted that **any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered, must be considered as either a request for annual re-registration or as a new filing for TPS benefits.** If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17.

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).

The burden of proof is upon the applicant to establish that he 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).

With regard to the instant application, the record includes a letter, dated May 16, 2003, from the director to the applicant indicating that the director intended to deny a Form I-821 filed by the applicant on November 7, 2002 (file receipt number EAC 03 078 50594). This Form I-821, and its supporting documentation (if any), however, is not included in the record of proceeding. In the letter, the director requested the applicant to submit evidence to establish that he is eligible for late registration, and to submit evidence of his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. It is noted that this is the most recently issued CIS document contained within the record.

According to the Form I-290B, Notice of Appeal, submitted by the applicant on July 31, 2003, the director denied the Form I-821 on July 16, 2003. The director's notice of denial, however, is not included in the record of proceeding.

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision, including the following items arranged from top to bottom in the following order:

- (1) Notice of Entry of Appearance as Attorney or Representative (Form G-28).
- (2) Brief, statement, and/or supporting evidence.

¹ In connection with Forms I-765, Applications for Employment Authorization.

- (3) Notice of Appeal to the Administrative Appeals Office (Form I-290B).
- (4) Decision.
- (5) Any response to notice of intent to take unfavorable action.
- (6) Notice of intent to take unfavorable action.
- (7) Investigative reports and/or other derogatory information.
- (8) Application or petition.
- (10) Evidence in support of application or petition.

As the record of proceeding does not contain a copy of the Form I-821 filed by the applicant on November 7, 2002, nor of the director's decision to deny the application, dated July 16, 2003, the decision of the director will be withdrawn and the record will be remanded so that the director can properly adjudicate the case and enter a new decision.

It is noted that the applicant has consistently indicated on documentation submitted to CIS that he last entered the United States without inspection in March 1999, and that he has not submitted sufficient evidence to establish continuous residence and continuous physical presence.

As always in these proceedings, an alien applying for temporary protected status has the burden of proving that he meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act.

ORDER: The matter is remanded to the director for further action consistent with the foregoing discussion and entry of a new decision.