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U.S. Citizenship
and Immigration
Services



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FILE:



Office: VERMONT SERVICE CENTER

Date: MAY 05 2005

[EAC 03 209 51729]

IN RE:

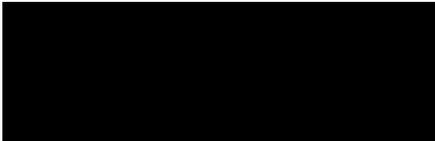
Applicant:



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 application was denied by the Director, Vermont 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 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, counsel submits a brief.

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 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 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 record reflects that the applicant filed his initial application with the Immigration and Naturalization Service now Citizenship and Immigration Services (CIS), on July 2, 2003.

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 record of proceeding confirms that the applicant filed his application for TPS on July 2, 2003, after the initial registration period had closed. 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 6, 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, to the date of filing his TPS application. In response, the applicant submitted some receipts, and correspondence with the Service. The applicant also submitted a letter stating that he filed a TPS application on August 20, 1999, which he states was received by the Service on August 23, 1999, but was “refused because it was too late,” and a TPS application dated May 31, 2000, which the applicant states was also refused.

The director found that the applicant failed to submit any evidence to establish his eligibility for late registration. Consequently, the director denied the application on October 22, 2003.

On appeal, counsel states, in pertinent part:

Applicant submitted his application on Aug. 20th, 1999, to the U.S. Postal Service. Given that Vermont and New Jersey are not contiguous States, and that the notices specifically precluded the applicant from submitting his application to the New Jersey INS District Office, applicant was prejudiced by the exclusion of applications not received by the Vermont Service Center by close of business day. Had the notice specifically allowed applicant to apply to any INS Office by close of business day Aug. 20th, 1999, he then had the choice of applying in person to the New Jersey INS District Office.

8 C.F.R. 103.2(a)(6) allows the filing of an application either at the INS office or Service Center having jurisdiction over the applicant. The above-mentioned notices specifically preclude any applicant from utilizing this alternate mode of filing, thereby precluding the consideration of any application that was not received on time. The original considerations of TPS allowed the individual District Offices to decide whether the applicant should had [sic] filed by mail or in person. See INS IMMACT Wire No. 29.

Therefore, the application should have been considered as filed within the allotted time filed by the extension of time granted by the Attorney General, not under the provisions of late initial registration.

Counsel's statement on appeal is not persuasive in establishing that the applicant is eligible for late registration. Pursuant to 8 C.F.R. § 244.7(a), an application for TPS must be filed with the director having jurisdiction over the applicant's place of residence, in this case, the Director of the Vermont Service Center. 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 record contains insufficient evidence to demonstrate that the applicant has been continuously residing in the United States since December 30, 1998, and that he has been continuously physically present in the United States since January 5, 1999. The record merely contains some documentation for the year 2003, documentation dated prior to the qualifying timeframes, evidence of a dental appointment for January 4, 1999, at 2 P.M., a receipt dated January 4, 1999, for dental treatment, and several documents in a foreign language without the English translations. 8 C.F.R. § 204.1(f)(3) states that foreign language documents must be accompanied by an English translation which has been certified by a competent translator. Therefore, the application must also be denied for these reasons.

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.