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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **APR 06 2006**

[WAC 05 085 74368]

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:

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.


for Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant claims to be a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed an initial TPS application on June 27, 2002, under Citizenship and Immigration Services (CIS) receipt number SRC 03 082 53474. The director denied that application on June 19, 2004, because the applicant had failed to establish that he was eligible for late initial registration.

Although the applicant was advised that he could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Unit, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 24, 2004, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

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.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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 initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current application with CIS on December 24, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he 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 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 proceeding contains a letter dated June 20, 2002, from the applicant's father [REDACTED] stating that his son (the applicant) is eligible for late registration because he is the child of an alien currently eligible to be a TPS registrant. To support his claim, [REDACTED] included a copy of Form I-797C, Notice of Action, as evidence that he was a TPS applicant, and a copy of his Employment Authorization Card.

Regulations at 8 C.F.R. § 244.2(f)(2)(iv) simply allow children of aliens who are TPS-eligible to file applications after the initial registration period had closed; however, these regulations do not relax the requirements for eligibility for TPS. The record indicates that the applicant was born on July 8, 1977. Section 101(b)(1) of the Act defines the term "child" to mean an unmarried person under 21 years of age. The applicant turned 21 years of age on July 8, 1998. As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following his 21st birthday to file an application for late registration to meet the requirement described in 8 C.F.R. § 244.2(f)(2)(iv). However, the TPS application was not filed until July 3, 2003. Accordingly, the applicant, during the initial registration period, did not meet the qualification of a child of an alien currently eligible to be a TPS registrant described in 8 C.F.R. § 244.2(f)(2)(iv).

The applicant has failed to provide any other evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

Beyond the decision of the director, it is noted that although the record of proceeding contains a Honduran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason.

Additionally, the Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant was arrested in Florida for: (1) battery on February 2, 1998; (2) alcoholic beverage-possession of open container in vehicle, and possession of cocaine on May 17, 2000; (3) prostitution on December 18, 2001; and (4) alcoholic beverages-drinking in public on April 30, 2004. The final court dispositions of these arrests are not included in the record of proceeding, nor is there evidence that the applicant was requested to submit the

court dispositions of all of his arrests. CIS must address these arrest and/or convictions in any future decisions or proceedings.

The FBI report also indicates that the applicant was apprehended by the Border Patrol near McAllen, Texas, on September 21, 1994, and was placed in removal proceedings (file number [REDACTED])

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.