



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 25 2006

[WAC 05 074 70076]

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:

[REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) 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 on June 28, 1999, during the initial registration period, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 99 211 50105. The District Director, Houston, Texas, denied that application due to abandonment on November 25, 2003, because the applicant failed to provide a current address, and failed to respond to a request for additional evidence to establish his eligibility for TPS. The Notice of Intent to Deny dated October 27, 2003, in which the applicant was requested to submit photo identification and evidence establishing his continuous residence in the United States since January 5, 1999, along with the denial letter, were returned by the United States Postal Service marked as undeliverable. Both letters, however, were mailed to the address as provided on the applicant's June 28, 2002, and July 7, 2003, applications for TPS and employment authorization. It is noted that with his current TPS application, the applicant submitted a copy of the CIS receipt notice for his July 2003 employment authorization application that was mailed to, and apparently received at, the same address as that to which the letters were sent. The record does not contain a notification of change of address. Because the initial application was denied due to abandonment there was no appeal available; however, the applicant could have filed a motion to reopen within 33 days of the date of the decision. The applicant did not file a motion to reopen the decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 13, 2004, and indicated that this was an application for re-registration or extension of TPS benefits.

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

On appeal, counsel for the applicant states that the applicant's previous requests for extensions were granted and they have not received a specific reason from CIS as to why the current application has been denied. In support of the appeal, counsel submits a copy of the Form I-213, Record of Deportable Alien, indicating that the applicant was encountered on August 18, 1997, in Lima, Ohio, and claimed an August 1996 entry without inspection into the United States via Matamoros.

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, to August 20, 1999. The record reveals that the applicant filed the current application with CIS on December 13, 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. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

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 applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Although the applicant previously submitted an application for TPS during the initial registration period, any Form I-821, 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. Because the initial application was denied on November 25, 2003, this subsequent application cannot be considered as a re-registration, but only as an application for late registration. The record reflects that, following the applicant's final order of removal to Honduras issued on January 21, 1998, by the Immigration Judge, Chicago, Illinois, the applicant's appeal to the Board of Immigration Appeals (BIA) was dismissed on June 30, 1998, as having been untimely filed. The applicant was placed under an Order of Supervision dated January 6, 1999, at Houston, Texas, that was terminated on April 6, 2003. The applicant has not established his eligibility for late initial registration, and, therefore, this application must be denied for this reason.

The applicant also failed to submit sufficient evidence to establish his continuous physical presence in the United States since March 9, 2001, to the date of filing. Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

In addition, the record contains only a photocopy of a birth certificate, with English translation. The applicant failed to submit a national identity document from his country of origin bearing a photograph and/or fingerprint, such as a passport, or State-issued photo identification. The submitted documentation alone is insufficient to establish the applicant's nationality under the provisions of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be denied for this reason.

The record contains the Order of the Immigration Judge, Chicago, Illinois, dated January 21, 1998, ordering the applicant's removal to Honduras, and the decision of the BIA dated June 30, 1998, dismissing the appeal.

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.