



U.S. Citizenship
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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date: JUL 25 2006

[WAC 05 103 73362]

IN RE:

Applicant:

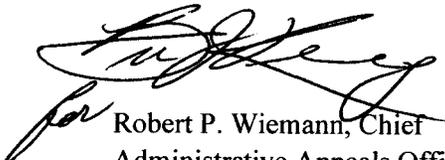
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APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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 is 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 July 7, 2003, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 03 201 55103. The Texas Service Center Director denied that application due to abandonment on January 5, 2004, because the applicant failed to respond to a request for additional evidence to establish his eligibility for TPS. In a letter dated September 22, 2003, the applicant had been requested to submit: final court dispositions for charges appearing on his Federal Bureau of Investigation (FBI) fingerprint results report; evidence establishing his eligibility for filing for late initial registration; and, evidence establishing his continuous residence in the United States since January 5, 1999. The record does not contain a response from the applicant. 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 January 11, 2005, 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, the applicant states that he did not apply for TPS when the program came into effect because he was hospitalized with a broken leg. He states that he is submitting insurance checks for disability as proof of the above-mentioned accident, and evidence that he has lived in the United States for many years. In support of the appeal, the applicant submits: a Certificate of United States Naturalization belonging to a relative; a fingerprint notification dated January 18, 2005; copies of the Form I-821, and Form I-765, Application for Employment Authorization, signed by the applicant on July 3, 2003, with corresponding money order of the same date, payable to CIS; CIS receipt notices dated July 7, 2003, for the TPS and employment authorization applications; a letter from the applicant dated December 9, 2004, to the North Brevard Court, Titusville, Florida, requesting the disposition of the charges related to an April 28, 1999 arrest; a Notice of Nolle Prosequi, Case Number: [REDACTED] dated July 30, 1999, discharging the applicant from further court appearances in that cause; an auto loan document dated February 5, 2002; a payment coupon dated June 18, 2002; the biographic page of his Honduran passport issued by the Consulate General, Atlanta, Georgia, on June 8, 2001; insurance payments to the applicant dated in July and November of 2000, for an accident indicated as occurring on March 13, 2000; and, payroll information dated in 1996, 1997, 1999 and 2000.

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 January 11, 2005.

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). As noted above, the applicant's initial TPS application also was filed outside of the initial registration period. It is noted that the applicant checked the box on his July 7, 2003, Form I-821, indicating that it was an application for re-registration or extension of TPS temporary treatment benefits. The applicant, however, did not provide sufficient evidence of having applied during the initial registration period. The applicant asserts that he did not apply during the initial registration period because he was hospitalized. The documents submitted in support of this assertion, however, indicate that the accident occurred in the year 2000, while the initial registration period for Hondurans had already taken place between January 5, 1999 and August 20, 1999. The record does not contain any evidence of the applicant having filed an earlier TPS application. 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 January 5, 1999, to the date of filing. The record does not contain evidence for the entirety of the requisite period. Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b), and the application must also be denied for this reason.

In addition, the Federal Bureau of Investigation (FBI) fingerprint results report dated June 16, 2006, reflects criminal charges related to the applicant's fingerprints, in addition to the 1999 charge(s) for which the director had previously requested court dispositions. The record reflects the following offenses:

- 1) On August 20, 2005, the applicant was arrested by the Sheriff's Office, Ellijay, Georgia, and was charged with:
 - a. Charge 1-Theft by Shoplifting-/Fel/Misd/-
 - b. Charge 2- Contributing to Delinquency of a Minor -Misd.
- 2) On April 28, 1999, the applicant was arrested by the Titusville [Florida] Police Department and was charged with:
 - a. Charge 1-Battery-Domestic Violence, Statute/Ordinance - FL784.03, Misdemeanor
- 3) In supplemental arrest data, the charge above at Number 2), Court [REDACTED] was given the disposition of [REDACTED] July 22, 1999, and reflects No Plea Entered and Pre-Trial Diversion on August 3, 1999.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors [as defined in 8 C.F.R. § 244.1] committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). These issues relating to the applicant's criminal record must be addressed in any future proceedings as they have bearing on the applicant's eligibility for TPS, and may have bearing on his admissibility.

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.