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**U.S. Citizenship
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Services**

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FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

JUN 26 2006

[SRC 03 030 53189]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 director denied the application because the applicant failed to establish his eligibility for late initial registration.

On appeal, the applicant submits a statement and additional evidence.

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 record reveals that on August 3, 2001, the applicant filed an initial TPS application under CIS receipt number SRC 01 255 55245. The Director denied that application on May 11, 2002, because the applicant failed to establish his eligibility for late initial registration. On May 20, 2002, the applicant submitted a letter stating that he had, in fact, applied for TPS on January 25, 1999, during the initial registration period. He stated that his forms were returned to him for lack of fees, but maintained that he resubmitted the documents with the required fees and that the applications were accepted as of July 2, 1999, also during the initial registration period. Because the applicant did not include the required fee and proper appeal form, this submission was not accepted as an appeal of the denial decision.

The applicant filed this subsequent Form I-821, Application for Temporary Protected Status, on October 15, 2002. The Director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration.

Any Form I-821 application 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. 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.

Because the applicant's initial Form I-821 was denied on May 11, 2002, this October 15, 2002, application cannot be considered as a re-registration, but can only be considered as an application for late initial registration.

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.

Persons applying for TPS offered to Hondurans must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence 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, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed this TPS application with Citizenship and Immigration Services (CIS), on October 15, 2002.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed 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).

On January 27, 2003, the Director requested the applicant to submit additional evidence establishing his eligibility for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2). In response, the applicant stated that he was not applying late because he had, in fact, applied for TPS during the initial registration period. He also submitted a statement regarding fees he paid in 2002. In addition, the applicant submitted photocopies of the following evidence: his Form I-821, signed on January 25, 1999; the Form I-765, Application for Employment Authorization, signed by the applicant on January 25, 1999, and bearing various date stamps; a TSC letter dated February 26, 1999, indicating that the required filing fees for the Form I-821 and Form I-765 had not been submitted; the applicant's letter stamped as received on March 25, 2000, stating that he had resubmitted the paper work with the correct fees; a CIS receipt notice dated August 14, 2001, indicating that his request for employment authorization, SRC 01 243 53849, was being rejected for lack of correct fees; CIS receipt notices for his August 3, 2001, TPS and employment authorization applications; and, CIS receipt notices for his May 22, 2002, and October 15, 2002, employment authorization applications.

The director determined that the applicant had failed to establish his eligibility for late initial registration and denied this application on October 3, 2003.

On appeal, the applicant states that he believes this denial is made in error because he has filed timely and complied with the requirements for re-registration and for responding to all requests. In support of the appeal, the applicant submits additional evidence consisting of: two employer letters; tax documentation for 1998 and 1999; and, a State of Tennessee Birth Certificate indicating that he is the father of a child born on July 6, 2003. He also resubmits additional copies of: his Social Security Card; the mailer and his Employment Authorization document (EAD) under Category C19, with validity from October 30, 2001 through July 5, 2002; fingerprint fee receipt dated August 28, 2001; and, CIS receipt notices for the August 3, 2001, TPS and employment authorization applications.

The applicant submitted evidence relating to his qualifying continuous residence and continuous physical presence in the United States, and attempted to demonstrate that he had previously applied for TPS during the initial registration period. The record contains the Form I-821, and the Form I-765, signed by the applicant on January 25, 1999. In a letter dated February 26, 1999, the Director informed the applicant that the required filing fees for the Form I-821 and Form I-765 had not been submitted. The applicant submitted a letter stamped as received on March 25, 2000, stating that he had resubmitted the paper work with the correct fees. The submitted copy of the Form I-821, signed on January 25, 1999, does not bear any receipt stamps. The corresponding Form I-756 bears receipt stamps of July 14, 1999, and July 5, 2000, which have been crossed out, indicating that the form was not properly filed. The Form I-765 also bears the stamp of July 2, 2001, and CIS receipt number SRC 01 243 53849. In a CIS receipt notice dated August 14, 2001, the applicant was informed that the Form I-765 was being rejected for having the incorrect fee. The records of CIS reflect that the Form I-765 under CIS receipt number SRC 01 243 53849, was rejected for submission of incorrect or no fee, and do not reflect any other properly received applications until the August 2001 TPS and employment authorization applications. The applicant has not submitted evidence of having resubmitted the 1999 applications with the proper fees. It must be concluded that the applicant did not properly register for TPS during the initial registration period. See 8 C.F.R. § 244.1. The applicant has not established 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.

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.