

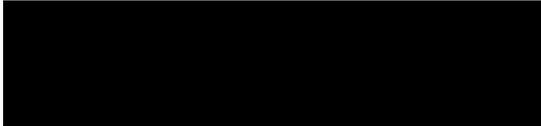


U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date **MAY 03 2006**

[WAC 05 148 74755]

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a 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 applicant filed his initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number SRC 99 217 50350. The applicant's fingerprint results report revealed the following offenses:

1. On December 16, 1995, the applicant was arrested in Miami, Florida, and charged with driving under the influence of alcohol.
2. On December 25, 1996, the applicant was arrested in Miami, Florida, and charged with driving under the influence of alcohol.

On February 2, 2001, the applicant was requested to provide the final court dispositions of the offenses detailed above and police clearances from every city in which he has lived since his arrival in the United States. The record does not contain a response from the applicant. The Director of the Texas Service Center denied the application on May 4, 2001, because he found that the applicant had failed to submit requested court documentation relating to his criminal record. The applicant did not file an appeal or a motion to reopen the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 25, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment 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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

On appeal, counsel asserts that the director erroneously denied the current TPS application because the applicant had previously been granted TPS. Counsel submits a photocopy of a CIS notice acknowledging receipt of the applicant's Form I-765, Application for Employment Authorization, on June 28, 2002; photocopies of three postal return receipts indicating receipt of mail from the applicant at the Texas Service Center on July 8, 2000; June 27, 2002, and February 2, 2005; and, photocopies of two Employment Authorization Cards valid from September 7, 1999 to July 5, 2000 and from October 12, 2000 to July 5, 2001, respectively.

Counsel's assertion that the applicant has previously been granted TPS is incorrect. As previously stated, the applicant's initial TPS application was denied on May 4, 2001. The Employment Authorization Cards submitted on appeal indicate that the applicant had a pending TPS application; they do not indicate that the applicant had been granted TPS.

Since the applicant has not previously been granted TPS, he is not eligible to re-register for TPS or to renew his temporary treatment benefits. 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)
  - (1) Registers for Temporary Protected Status 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 initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current TPS application with CIS on February 25, 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.

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).

The record indicates that the applicant was the beneficiary of a Form I-130, Petition for Alien Relative, filed on his behalf by [REDACTED] United States citizen. The District Director, Miami, Florida, denied that petition on February 18, 1998, because the applicant and [REDACTED] failed to appear for their interview as scheduled. Therefore, the applicant cannot qualify for late initial registration on this basis.

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). The applicant is also ineligible for TPS due to his failure to provide the final court dispositions of the offenses detailed above as described at 8 C.F.R. § 244.9(a). The applicant has also failed to provide sufficient evidence to establish continuous residence and continuous physical presence in the United States during the requisite periods as described at 8 C.F.R. §§ 244.2(b) and (c). Therefore, the application also must be denied for these reasons.

It is noted that the applicant was previously deported from the United States to Honduras on February 4, 1997.

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.