



U.S. Citizenship
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

Date: MAY 30 2006

[WAC 05 053 71462]

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.

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 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 6, 2003, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 03 175 55320. The Texas Service Center (TSC) Director denied that application on January 8, 2004, because the applicant failed to establish his eligibility for late initial registration. A subsequent appeal was then dismissed on February 24, 2005, after the Director (now Chief) of the AAO concluded that the appeal had been untimely filed and that the applicant had failed to establish his eligibility for TPS. The applicant filed a motion to reopen the decision of the Director of the AAO that is being dismissed under separate cover.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on November 22, 2004, and indicated that he was re-registering for TPS.

The director denied the re-registration 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 for TPS.

On appeal, the applicant states that he has been living in the United States since 1997, and would like to continue working here in order to support his family. In support of the appeal, the applicant submits additional evidence in his name dated between 2003 and 2005, in an attempt to establish his continuous residence and continuous physical presence in the United States.

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 November 22, 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 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 previous TPS application also was filed outside of the initial registration period. That application was denied and the subsequent appeal and motion were dismissed because the applicant did not establish his eligibility for late registration. Because the applicant has not established his eligibility for late initial registration, this application also must be denied for this reason.

In addition, the applicant also has failed to submit sufficient credible evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The documentation for the early portion of the requisite period is largely generic and cannot be directly linked to the applicant. Moreover, Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant was apprehended by the United States Border Patrol while attempting entry into the United States at or near Brownsville, Texas, on or about August 16, 1999. His entry into the United States in August of 1999 precludes a favorable finding as to his continuous residence and continuous physical presence in the United States during the requisite periods. 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.

It is noted that the record contains a Warrant of Removal/Deportation issued on March 28, 2000, at Harlingen, Texas, following the final order of removal to Honduras issued *in absentia* by the Immigration Judge, Harlingen, Texas.

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.