



U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 02 2006  
[WAC 05 800 16910]

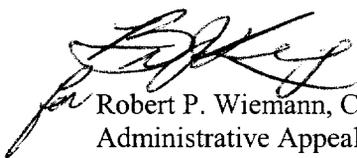
IN RE: Applicant: [REDACTED]

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 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 the applicant filed an initial TPS application on June 12, 2000, under Citizenship and Immigration Services (CIS) receipt number WAC 00 258 51526. The director denied that application on May 21, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 28, 2004, and indicated that he was re-registering for TPS.

The director denied the re-registration 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 states that the applicant argues there was no basis for "denial" of his application since he already held TPS, and this was merely a re-registration procedure; therefore, it should have been "withdrawn." Counsel asserts that subsequent to the filing of the TPS application, the applicant presented himself for fingerprinting and received employment authorization, and that when he received an additional notice for fingerprinting, he contacted the National Customer Service and he was advised that his fingerprints were up to date, and that based upon that advice he did not present himself for additional fingerprinting; therefore, he did not abandon his application, but instead acted upon the advice provided him by the Customer Service Office. He further asserts that the applicant's affidavit should be enough evidence.

A review of the record of proceeding indicates that the applicant filed his initial TPS application on June 12, 2000, and he was subsequently fingerprinted on November 14, 2000. Because it had been over three years since he was last fingerprinted, the applicant was requested on November 18, 2003, to appear for fingerprinting at the CIS office in Las Vegas, Nevada, on December 16, 2003. The applicant failed to appear as required. Therefore, the director concluded that the applicant had abandoned his application and denied the application on May 21, 2004.

If an individual requested to appear for fingerprinting or for an interview does not appear, CIS does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15). Although the applicant, in this case, was advised that he could file a motion to reopen, in accordance with 8 C.F.R. § 103.5, he failed to do so.

The applicant claims that when he received the notice for fingerprinting, he called the National Customer Service and was told that he "did not need to report for fingerprinting/biometric processing because I only needed to be fingerprinted once and I already had." The applicant, however, neither furnished the date and name of the individual to whom he had spoken, nor furnished any evidence to corroborate his claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the applicant's claim that his application should have been withdrawn rather than denied because he had been granted TPS, is without merit. The fact that the applicant was issued Employment Authorization Cards (EAD) is not evidence that he was approved TPS. Based upon filing of the I-821 application for TPS, the applicant was afforded temporary treatment benefits and was issued EADs upon establishing *prima facie* eligibility<sup>1</sup> for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

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 Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current application with CIS on December 28, 2004.

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<sup>1</sup> Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

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). Therefore, the application also must be denied for this reason.

Beyond the decision of the director, it is noted that the applicant filed his initial TPS application on June 12, 2000, after the initial registration period for Hondurans (from January 5, 1999 to August 20, 1999) had closed. A review of the record indicates that the applicant filed Form I-589, Request for Asylum in the United States, on October 23, 1992. In removal proceedings held on July 14, 1994, in Las Vegas, Nevada, the Immigration Judge (IJ) denied asylum/withholding of deportation and suspension of deportation, and granted the applicant voluntary departure on or before October 15, 1994, with an alternate order of deportation to Honduras if the applicant should fail to depart as required. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On June 29, 1999, during the initial registration period for Hondurans, the BIA administratively closed proceedings after noting that the applicant appeared eligible to apply for TPS. The applicant, however, did not file the initial TPS until June 12, 2000, after the initial registration period had closed, and after the 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2 (f)(2). See 8 C.F.R. § 244.2(g).

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.