U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 28 2006
[WAC 05 067 73873]
[WAC 05 219 50644, *Appeal]*

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 California Service Center. 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 (CSC), 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 the applicant filed an earlier TPS application on May 21, 2002, after the initial registration period had closed, with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) under receipt number SRC 02 182 54523. The Texas Service Center director denied that application on July 15, 2002, because the applicant failed to establish his eligibility for late initial registration under the provisions described in 8 C.F.R. § 244.2(f)(2) and (g). The applicant filed an appeal from the denial decision that was dismissed by the Director (now Chief) of the AAO on October 31, 2002. A subsequent motion to reopen the decision of the AAO Director was also dismissed on February 2, 2005, because it was untimely filed and did not overcome the finding of the directors. The applicant filed a second motion to reopen the denial of his application that is being addressed under separate cover, in which the Chief of the AAO dismisses the motion after again concluding that the applicant had failed to establish his eligibility for late initial registration. In that decision, the Chief of the AAO also notes that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods, based upon his apprehension by the United States Border Patrol, Del Rio, Texas, on March 28, 2000.

The record reflects that the applicant filed the current Form I-821, Application for Temporary Protected Status, on December 6, 2004, and indicated that he was re-registering for TPS.

On July 23, 2005, 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, the applicant states that he has been living in the United States since 1997, and would like to work here in order to support his family. In support of the appeal, the applicant submits additional evidence 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 December 6, 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 establish that this application should be accepted as an application for late initial registration. As noted above, the applicant's initial TPS application was also submitted outside of the initial registration period. That application, the appeal, and the motion were dismissed, in part, for this reason. The applicant has not established that he has met any of the criteria for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2) and (g). Therefore, the application also must be denied for this reason.

In addition, the applicant has not established his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. Therefore, the applicant has not established that he has met the requirements as described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

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.