



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: Nebraska Service Center DATE: **AUG 31 2007**
[LIN 02 234 50658]

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:



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.

Cindy N. Gomez

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center (NSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 director denied the application on the grounds that the applicant failed to establish he met the requirements for late initial registration, that he had been continuously resident in the United States since December 30, 1998, and that he had been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant submits additional evidence of his residence and physical presence in the United States and asserts that he filed a timely TPS application that met the requirements 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 TPS if such alien establishes that he or she:

- (a) Is a national of a 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 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.

Honduran nationals applying for TPS must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The initial registration period for Hondurans was from January 5 to August 20, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite period.

To qualify for late TPS registration, the applicant must provide evidence that during the initial registration period he satisfied at least one of the criteria enumerated in 8 C.F.R. § 244.4(f)(2) and that he filed his application within 60 days of the termination of the qualifying condition, in accordance with 8 C.F.R. § 244.4(g).

The burden of proof is upon the applicant to establish that he meets the requirements discussed above. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). *See* 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. *See* 8 C.F.R. § 244.9(b).

The record reveals that the applicant – who was born in Honduras on August 1, 1955, and claims to have entered the United States without inspection on July 31, 1992 – filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on October 21, 1997, with the St. Paul District Office. On the same day the applicant's wife, [REDACTED] a native-born U.S. citizen, filed a Form I-130, Petition for Alien Relative, with the St. Paul District Office. On September 1, 1998, after the applicant's wife failed to respond to a request for evidence, the district director denied the Form I-130 petition on the ground of abandonment and the Form I-485 application on the ground that the Form I-130 petition had been abandoned and no new petition had been filed on the applicant's behalf to accord him status. On October 14, 1998, the applicant's wife filed a motion to reopen. On June 9, 1999, after the applicant and his wife once again failed to respond to a request for evidence, the district director denied the Form I-130 petition for a second time on the ground of abandonment and the Form I-485 petition, also for a second time, on the ground that the relative petition filed by the applicant's wife had been denied and no other petition had been filed on the applicant's behalf. Though the decision on the Form I-130 petition advised that an appeal could be filed with the Board of Immigration Appeals (BIA) within 30 days, no such appeal was filed.

On the same day the Forms I-130 and I-485 were filed – October 21, 1997 – the applicant also filed a Form I-765, Application for Employment Authorization. The applicant was granted employment authorization valid for one year or until the underlying Form I-485 was no longer valid. One year later, in October 1998,

the applicant was granted a one-year extension of this employment authorization until October 1999, again based on the pending Form I-485 petition. Though the Form I-485 petition was denied on June 9, 1999, and the decision expressly stated that “[a]ny permission to accept employment in the United States previously given to you as an applicant for lawful permanent residence is terminated,” the applicant was granted another Employment Authorization Card in October 1999, with a one-year validity period until October 2000, stating that it was based on 8 C.F.R. § 274A.12(c)(9) [“An alien who has filed an application for adjustment of status to lawful permanent resident.”]. On the applicant’s Form I-765, which was filed and approved on October 19, 1999, a hand-written notation indicates that the application was approved based on 8 C.F.R. § 274A.12(c)(10) [an alien who has filed an application for cancellation of removal or a special rule cancellation of removal application pursuant to the Nicaraguan Adjustment and Central American Relief Act (NACARA)]. According to Citizenship and Immigration Services (CIS) electronic records, the applicant was granted two more one-year employment extensions in October 2000 and October 2001, the last of which was valid until October 2002, based on 8 C.F.R. § 274A.12(c)(9).

Despite the extension of the applicant’s employment authorization on three occasions after June 1999, the record does not indicate that the applicant had any petition for adjustment of status to lawful permanent resident (Form I-485), or any application for cancellation of removal or a special rule cancellation of removal pursuant to NACARA (Form I-881), pending at the time the extensions were granted in October 1999, October 2000, and October 2001. As previously noted, no appeal was filed after the district director’s denial of the Form I-485 petition in June 1999. On September 14, 2000, the applicant’s wife filed a new Form I-130 on behalf of the applicant. Although she indicated on the form that her husband would file an application for adjustment of status to lawful permanent resident, no new Form I-485 was filed by the applicant. Thus, the extensions of the applicant’s employment authorization in 1999, 2000, and 2001, appear to have been erroneous because he had neither a Form I-485 petition nor a Form I-881 application pending, on appeal, or under review at those times.

On June 9, 1999, the day the Form I-485 petition was denied by the district director, the assistant district director initiated removal proceedings by sending the applicant a Notice to Appear before an Immigration Judge (IJ) at the St. Paul District Office. On August 5, 1999, after the applicant failed to appear at the scheduled hearing, the IJ ordered that the applicant be removed to Honduras. On August 22, 1999, the applicant filed a motion to reopen the case, which was received at the district office on August 26, 1999. On September 10, 1999, the IJ issued an order granting the applicant’s “Motion to Reopen proceedings and rescind [the] In Absentia Removal Order.” Thus, the applicant’s removal proceedings were reopened in September 1999. The foregoing actions by the IJ did not reopen the Form I-485 proceedings, however, and did not affect the district director’s denial of that petition. The reopening of the removal proceedings by the Immigration Judge did not substitute for, or mitigate, the prior failure of the applicant’s wife to appeal the denial of the Form I-130 petition.

On January 10, 2002, an Immigration Judge concluded the applicant’s removal proceedings by ordering the applicant’s removal to Honduras. The IJ also found that “the [applicant’s] failure to appear and proceed with any applications for relief from removal constitutes an abandonment of any pending applications and any applications the [applicant] may have been eligible to file. These applications are deemed abandoned and denied for lack of prosecution.” The AAO notes that there is no evidence in the record of any application for relief from removal having been filed by the applicant, or any other application that was pending as of January 2002.

The record shows that the applicant's initial Form I-821, Application for Temporary Protected Status, was filed at the NSC on July 1, 2002 (the date of the NSC's receipt stamp). In a decision dated March 11, 2003, the NSC Director denied the application on the grounds that (1) it was filed nearly six months after any pending Form I-485 application was denied, and therefore did not meet the requirement of 8 C.F.R. § 244.2(g) that it be filed within 60 days of the termination of an application for adjustment of status, and (2) the applicant failed to establish that he had resided continuously in the United States since December 30, 1998, and been continuously physically present in the United States since January 5, 1999, as required for TPS applicants from Honduras.

The applicant filed a timely appeal and submitted additional evidence of his residence and physical presence in the United States in the form of documentation over the years 1998-2002. The applicant also asserts that he initially attempted to file his TPS application with the NSC in August 2000, but that it was erroneously returned to him by the NSC based on an incorrect finding that the applicant was from the Central African Republic, rather than from Honduras. As evidence of this claim, the applicant submits a copy of a letter addressed to him from the NSC Director, dated August 31, 2000. As further evidence that the NSC returned his first application, the applicant has submitted a photocopy of a completed TPS application, dated June 30, 2000, with no receipt stamp or other official markings in the boxes reserved "For INS [now CIS] Use Only."

Even if the applicant did attempt to file his initial TPS application with the NSC on or shortly after June 30, 2000, that was more than a year after the St. Paul District Director's denial of his Form I-485 petition on June 9, 1999, and would not make the applicant eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii). Though the IJ implied in his removal order of January 2002 that the applicant may have had an application for relief from removal, or some other application, pending until then, there is no evidence in the record that the applicant had any application still pending or subject to further review or appeal after the Form I-130 and Form I-485 petitions were denied and he failed to file an appeal within 30 days. Thus, although a pending application for adjustment of status or an outstanding appeal of a decision denying adjustment of status would meet the qualifying criterion of C.F.R. § 244.2(f)(2)(ii) for late TPS registration, the applicant did not file, or attempt to file, his TPS application within 60 days of the denial of his Form I-485 petition, as required by 8 C.F.R. § 244.4(g) to be eligible for late registration. Accordingly, the NSC Director's denial of the TPS application will be affirmed on that ground.

Based on the entire record, including the documentation from the years 1998 to 2002 submitted on appeal and the materials submitted earlier in the proceeding, the applicant has established his continuous physical presence in the United States since January 5, 1999, and his continuous residence in the United States since December 30, 1998, as required under 8 C.F.R. § 244.2(b) and (c) for TPS applicants from Honduras. Accordingly, the applicant has overcome these grounds for denial. Nevertheless, the application will be denied because the applicant has not established his eligibility for late TPS registration.

An alien applying for TPS has the burden of proving that he meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet that burden.

ORDER: The appeal is dismissed.