



U.S. Citizenship
and Immigration
Services

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ML

[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 27 2007

[WAC 05 137 72462]

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 case will be remanded to the director for further action.

The applicant claims to be 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 director denied the application because the applicant had failed to establish that he was eligible for late registration.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the latest extension valid until July 5, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed his TPS application on February 14, 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).

In a Notice of Intent to Deny (NOID) dated May 26, 2006, the applicant was requested to submit evidence to establish that he qualified for late registration as described in 8 C.F.R. § 244.2(f)(2). The director noted that the evidence furnished in response to the NOID was insufficient to establish eligibility for TPS and denied the application on August 7, 2006.

On appeal, counsel asserts that the director erred in denying the applicant's TPS application because the applicant has a Form I-485 (Application to Register Permanent Resident or Adjust Status) that was pending at the time he filed his TPS application. Counsel submits a copy of an "ASC Appointment Notice" dated January 18, 2006, advising the applicant to appear for an interview on February 1, 2006, at the USCIS Cleveland office, regarding his I-485 application. It is noted that the ASC Appointment Notice was assigned receipt number WAC 05 137 72463. This receipt number is identical to the receipt number assigned to Form I-765, Application for Employment Authorization, received on February 14, 2005.

It is also noted that the record of proceeding contains Form I-797C, Notice of Action, under receipt number EAC 01 217 50301, indicating that Form I-130, Immigrant Petition for Relative, filed by [REDACTED] on behalf of the applicant, was received on April 26, 2001. If a Form I-485 was filed based on that Form I-130, the applicant would not be eligible for TPS under the late registration provision because the Form I-485 must have been pending during the initial registration period for Hondurans. As provided in 8 C.F.R. § 244.2(f)(2)(ii), a pending application for permanent residence during the initial registration period would render the applicant eligible for late initial registration. Although the record indicates that Form I-130 had been filed on behalf of the applicant, the record of proceeding contains no evidence, other than the ASC Appointment Notice, that a Form I-485 was pending or was in fact filed based on an approved Form I-130.

Therefore, the case will be remanded so that the director may review any and all records pertaining to the applicant and to ascertain whether the applicant had, in fact, filed Form I-485 that was pending during the initial registration period. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

It is further noted that documents contained in the record of proceeding are insufficient to establish that the applicant has met the criteria for continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.