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U.S. Citizenship  
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Services

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FILE:



OFFICE: California Service Center DATE:

APR 25 2008

[WAC 05 097 72269]

INRE:

Applicant:



APPLICATION:

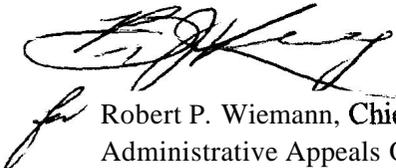
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

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 on appeal. The appeal will be dismissed.

The applicant is stated to be a citizen of Honduras who is applying for 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 his initial TPS application on June 19, 2002, after the initial registration for Hondurans had closed. The Director, Texas Service Center, denied that application on July 26, 2004, because the applicant failed to establish that he was eligible for late registration. The applicant was advised that he could appeal the director's decision within 30 days from the date of the denial; however, the record does not reflect the applicant had filed an appeal within the allotted timeframe.

The applicant filed his current TPS application on December 30, 2004, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on July 28, 2005 because the applicant had not been granted TPS, therefore, he is ineligible for re-registration under section 244 of the Act.

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.P.R. § 244.17. In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS.

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.

On appeal, the applicant states that his TPS application was denied only when he was going to renew. He further states that he did not receive any form to apply for asylum.

Section 244(c) of the Act, and the related regulations in 8 C.P.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only 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.P.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 (1)(2) of this section.

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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed this application with Citizenship and Immigration Services (CIS) on December 30, 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 submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(1)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

The applicant's Federal Bureau of Investigation fingerprint results report in the record of proceeding reveals the following:

On June 12, 2001, the applicant was arrested by the Police Department Atlanta and charged with:

1. CHARGE 1 - THEFT BY SHOPLIFTING/FEL/MISD.

On June 22, 2002, the applicant was arrested by the County Police Department Lawrenceville, Agency Case No. \_\_\_\_\_ and charged with:

2. CHARGE 1 - DUI - ALCOHOL - /MISD/ - The applicant was convicted and sentenced - Credit with Time Served, attend Traffic School, Community Service, 1 Day Confinement, 12 Months Probation, and paid \$700 in fine.

The final court dispositions for these arrests are not contained in the record of proceeding. CIS must address these arrests and any convictions in any future proceedings.

It is noted that the record reflects that the applicant was ordered removed from the United States by an immigration judge at an *in absentia* hearing held on January 27, 1999, in Houston, Texas.

An alien applying for TPS 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.