

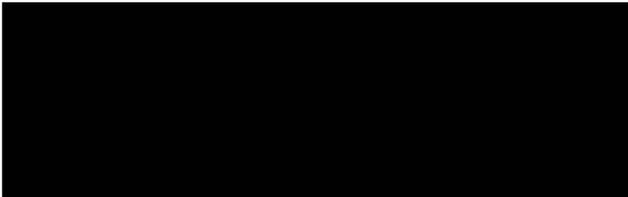
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

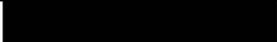


U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

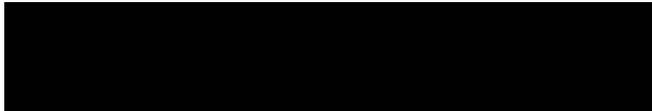
Date: APR 28 2008

[EAC 08 038 51015, *appeal*]

[EAC 07 003 51190]

INRE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 V.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 Vermont 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, Vermont 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 applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.c. § 1254.

The applicant filed an initial Form 1-821, Application for Temporary Protected Status, under receipt number EAC 07 003 51190 after the initial **registration** period had closed. The director denied that application on October 25, 2007, after determining that the applicant had **failed** to establish he was eligible for late initial registration. The director also found that the applicant had not established that he had been continuously physically present in the United States since January 5, 1999 or that he had continuously resided in this country since December 30, 1998.

On appeal, the counsel states:

The appellant has met the statutory requirements to be approved for Temporary Protective Status (TPS). The appellant was denied such relief because the U.S. Department of Homeland Security made an error in calculating his physical presence requirements. Thus appellant seeks to have this decision reversed.

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 temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the **Act**, of a foreign 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 TPS 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.

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 shows that the applicant filed his application with Citizenship and Immigration Services on October 2, 2005.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(t)(2) above.

On January 29, 2007, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States. The **applicant**, in response, provided documentation relating to his residence and physical presence in this country. However, he did not submit any evidence to establish that he was eligible for late initial registration.

There is an indication that the applicant was attempting to file a late initial application based upon his marriage to a TPS recipient. The applicant submits a copy of his marriage certificate and his wife's Form I-766, Employment Authorization Card valid from January 27, 2006 until September 9, 2006.

A copy of the applicant's marriage certificate indicates that he married _____ in Newburgh, New York, on June 18, 2004. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant was not the spouse of an alien currently eligible to be a TPS registrant during the initial registration period, he is not eligible for late registration for that reason. There is no evidence in the file to suggest that the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2).

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated February 27, 2006, indicating that the United States Border Patrol apprehended the applicant near Rochester, New York. At his interview, he stated that he last arrived in the United States at or near Sasabe, Arizona, on or about March 27, 2000. Despite the applicant's assertion that he first entered the United States on February 13, 1998, none of

the evidence presented by him establishes his continuous residence since December 30, 1998 and his continuous physical presence from January 5, 1999, to March 27, 2000, the date he states he last entered the United States. Nor has he documented the amount of time that he spent abroad prior to his last entry into this country. Therefore, he cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status is affirmed.

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 cited 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.