

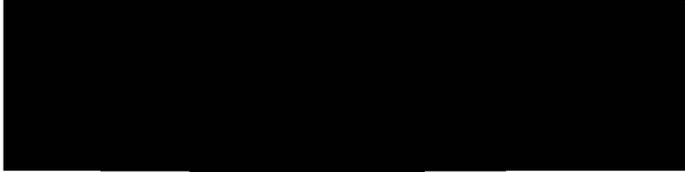


U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date: **FEB 11 2008**

[WAC 05 105 82089,
as it relates to SRC 01 25455837]

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:



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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Texas Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office. The appeal will be sustained and the applications will be approved.

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 initial TPS application on August 6, 2001, under CIS receipt number SRC 01 254 55837. The Director, Texas Service Center, denied that application on November 25, 2002, because the applicant failed to establish his eligibility for late initial registration. The record does not reflect that the applicant filed an appeal.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 6, 2005, under CIS receipt number WAC 05 105 82089, and indicated that he was filing an initial application for TPS. The Director, California Service Center, categorized the application as a re-registration application, and denied TPS on June 28, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

It is noted that counsel stated on the Notice of Appeal to the Administrative Appeals Office (AAO), Form I-290B, filed July 28, 2006, that an appeal brief will be submitted within 30 days. However, the record does not reflect receipt of an appeal brief. Also, counsel does not submit any additional evidence on appeal. Therefore, the record must be considered complete.

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 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.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.

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, 2009, upon the applicant's re-registration during the requisite period.

It is noted that the Texas Service Center director erred in denying TPS because at the time the applicant filed his initial TPS application he had a pending Form 1-485, Application for Adjustment of Status. The record reflects that the Form 1-485 was denied on September 11, 2001. The applicant's TPS application was filed on August 6, 2001, while the 1-485 was still pending, and therefore, he was eligible to file a late initial application for TPS as he fell within the provision described in 8 C.F.R. § 244.2(f)(2)(ii).

The record contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS: the record contains sufficient evidence to establish the applicant's identity and nationality, his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States from February 5, 1999, to the date of filing his initial TPS application, August 6, 2001. The record of proceedings does not reveal any derogatory information. The record of proceedings contains documentation, including tax records, which cumulatively establishes the requisite continuous residence and continuous physical presence, and the biographic page of the applicant's passport. Therefore, the director's decision will be withdrawn, and the initial application will be approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.