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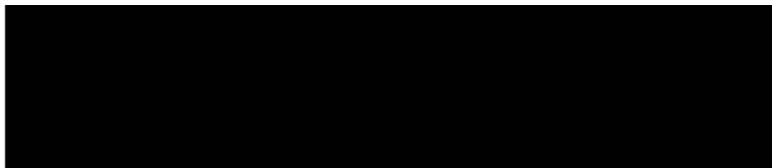
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Office: VERMONT SERVICE CENTER

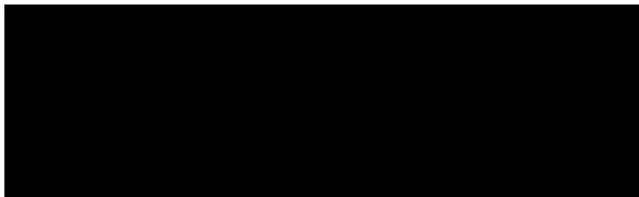
Date: **JAN 23 2008**

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 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, Vermont Service Center. The application was reopened and denied again 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 seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director initially determined that the applicant failed to establish that he was eligible for filing his TPS application after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On his initial appeal, counsel for the applicant stated that he is eligible for late initial registration for TPS because he had filed a Form I-485, Application to Register Permanent Residence or Adjust Status, in 2002. The Director, Vermont Service Center, reopened the application and determined that the Form I-485 was denied and the applicant had failed to file for TPS within 60 days from the termination of the application. The director therefore denied the application again because the applicant failed to establish that he was eligible for filing his TPS application after the initial registration period.

On the current appeal, counsel for the applicant states that neither he nor the applicant were aware that his Form I-485 had been denied.

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 as 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.

The term *continuously physically present*, as defined in 8 C.F.R. §244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The term *continuously resided*, as defined in 8 C.F.R. §244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

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 January 5, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed his initial TPS application on May 18, 2006.

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 Citizenship and Immigration Services (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 record of proceeding confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On December 1, 2006, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). Counsel for the applicant stated that the applicant was eligible for late initial TPS because he had a pending Form 1-485, Application to Register Permanent Residence or Adjust Status, and an approved Form 1-140, Immigrant Petition for Alien Worker, pending during the initial registration period. The applicant did not present sufficient evidence of his eligibility for late registration. Therefore, the director denied the application.

On his initial appeal, counsel for the applicant stated that the applicant had an adjustment of status application and an approved Form 1-140 during the initial registration period. The director reopened the application and determined that the applicant filed a Form 1-485 on June 13, 1995, that was denied on July 25, 2001. The director also found that the applicant filed another Form 1-485 on July 8, 2002, that was denied on January 28, 2005. According to the director, the applicant failed to file a TPS application within 60 days from the termination of the first Form 1-485 and therefore denied the application again because the applicant failed to establish his eligibility for late initial registration.

On the present appeal, counsel states that neither he nor the applicant were aware that the July 8, 2002 Form 1-485 had been denied.

CIS records indicate that the denials were sent to the applicant's address of record. There is nothing in the record to indicate that the notice was returned to CIS by the U.S. Postal Service as undeliverable. Therefore, the applicant's failure to receive the notice is of his own making. Furthermore, CIS records show that counsel did not begin to represent the applicant until April 21, 2006. Therefore, there is no reason counsel would have received notice of the denial of either Form 1-485. As discussed by the director, in order for the applicant to be eligible for late initial registration for TPS, the applicant would have had to file a TPS application on or before September 24, 2001. However, the applicant failed to file a TPS application until May 18, 2006.

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(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be 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 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.