

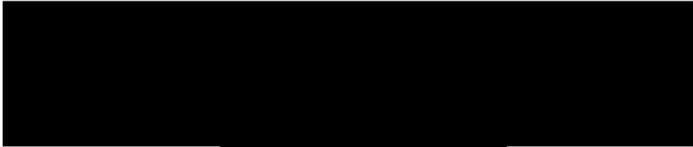
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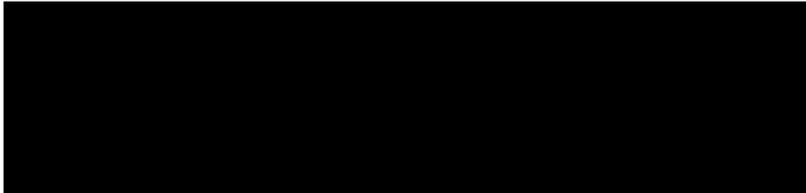
Office: TEXAS SERVICE CENTER

Date: **JAN 25 2008**

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 denied the application for TPS because the applicant failed to establish he was eligible for late initial registration.

On appeal, counsel states that during the initial period for TPS registration for nationals of Honduras, the applicant had an application for adjustment of status pending before Citizenship and Immigration Services (CIS) which he later withdrew after he divorced the person who had filed a Form I-130, Petition for Alien Relative, in his behalf. Counsel further states that the evidence shows that the applicant had obtained a work authorization based on his TPS status prior to the date he withdrew his application for adjustment of status and that he had filed for TPS late registration even before he withdrew his application for adjustment of status.

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.

The phrase *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 phrase *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. 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 CIS on July 10, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 8, 2004.

On appeal, counsel states that during the initial period for TPS registration for nationals of Honduras, the applicant had an application for adjustment of status pending before Citizenship and Immigration Services which he later withdrew after he divorced the person who had filed a Form I-130, Petition for Alien Relative, in his behalf. The regulations at 8 C.F.R. § 245.1(a) provide that An alien may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing the application. In this case, on August 9, 1996, the date the applicant forwarded his Form I-485, Application to Register Permanent Residence or Adjust Status, he was not eligible to receive an immigrant visa and one was not immediately available to him because the underlying immigrant visa petition filed by his spouse at that time had not been approved. Therefore, the applicant did not have an adjustment of status application that was pending during the initial registration period for TPS purposes, notwithstanding the acknowledgment of applicant's withdrawal of his application for adjustment that was issued by the Acting District Director of the Miami District office on August 1, 2001.

The applicant filed an initial and a subsequent Form I-821, Application for Temporary Protected Status, which were received on May 11, 2000 and on June 26, 2001 respectively. Neither was accepted for processing because they were not forwarded with the required filing fee(s). 8 C.F.R. § 103.2(a)(7)(i).

It is noted that even had the applicant filed a qualifying Form I-485 during the initial registration period, CIS regulations require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions that made the applicant eligible for late registration. 8 C.F.R. § 244.2(g). The applicant's withdrawal of his Form I-485 was acknowledged on August 1, 2001. His 60-day period during which he could have applied for TPS would have terminated on September 30, 2001. The applicant filed his TPS application on July 10, 2003, more than 21 months later.

On appeal, the applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his 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 the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed for this reason.

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.