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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: OCT 02 2008

[EAC 08 151 53662, appeal]

[EAC 07 203 50534]

IN RE:

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 Vermont 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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO), 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 I-821, Application for Temporary Protected Status, under receipt number EAC 03 195 51604 after the initial registration period had closed. The director denied that application on October 22, 2003, after determining that the applicant had failed to establish he was eligible for late initial registration. A subsequent appeal was dismissed by the Chief, AAO, on November 17, 2004. He then filed another Form I-821 under receipt number EAC 07 009 50747 that was denied by the director on February 26, 2007, after it was again determined that the applicant had failed to establish he was eligible for late initial registration. The director also determined that the applicant had failed to establish that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999. The applicant filed another Form I-821 under receipt number EAC 07 203 50534 which was denied by the director on April 4, 2008, who determined the applicant had failed to establish he was eligible for late initial registration and that he had failed to establish he had continuously resided and been continuously physically present in the United States during the required periods. On May 1, 2008, the applicant appealed the director's decision.

On appeal, the applicant states he is eligible for late initial filing because he is married and his wife is in a currently valid TPS status. The applicant submits a copy of his marriage certificate and the birth certificate of his child along with evidence to show his residence and physical presence in the United States.

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 first application with Citizenship and Immigration Services on June 10, 2003 and the current application on June 27, 2007.

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(f)(2) above.

The applicant is 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 December 3, 2007 until March 9, 2009.

A copy of the applicant's marriage certificate indicates that he married [REDACTED] in Mifflintown, Pennsylvania, on October 17, 2003. 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).

After review of the record, it is determined that the applicant has provided convincing evidence to establish his continuous residence and continuous physical presence during the required time periods. 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision is not affirmed for these two reasons. Nevertheless, the applicant remains ineligible due to his failure to apply for TPS during the initial registration as discussed above.

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.