



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
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interests of persons subject

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[REDACTED]

FILE:

[REDACTED]

Office: California Service Center Date:

, consolidated therein]

OCT 02 2008

[WAC 05 099 77002]

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:

[REDACTED]

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be 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 a TPS application during the initial registration period on July 2, 1999, under CIS receipt number EAC 99 217 51992. The Director, Vermont Service Center, denied that application on August 19, 2002, because the applicant failed to appear for a scheduled interview on April 3, 2001. The applicant was also requested to bring evidence to the interview establishing his nationality, his continuous residence and continuous physical presence in the United States during the requisite periods. The record reflects that the notice was mailed to the applicant's previous address.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9<sup>th</sup> Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 2, 2005, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on April 4, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant has now submitted an appeal from the director's decision.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

There is no indication that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration. Moreover, 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).

It is noted that the applicant submitted a copy of his driver's license issued in the Commonwealth of Virginia on November 24, 1998; a copy of his Identification Card issued in the Commonwealth of Virginia on January 27, 1998; a copy of an Alexandria City Vehicle Registration dated February 5, 1999; a copy of a Certificate of Title for a Vehicle issued on December 2, 1998; a copy of an accident report from Progressive dated December 10, 1998; a copy of an apartment Lease Agreement dated November 1, 1998; a copy of an employment letter dated October 22, 1999, from [REDACTED] an Assistant General Manager of Damon's Restaurant, attesting that the applicant has been employed since March 12, 1997; a copy of an insurance bill from Progressive dated June 10,

1999; and, copies of pay stubs from Damon's Restaurant dated July 25, 2000 and October 15, 1999. This evidence, however, is not sufficient to establish the applicant's continuous residence and continuous physical presence during the requisite period.

In addition, the applicant submitted an affidavit stating that he received an approval notice Form I-797C which indicated that his TPS had been granted. On June 25, 1999, CIS sent the applicant an approval notice under receipt number EAC 99 204 50583. This approval notice, however, pertained to his Form I-765, Application for Employment Authorization which was valid from December 12, 1999 to July 5, 2000.

It is also noted that pursuant to an Order issued by an Immigration Judge in El Paso, Texas on May 11, 1993, the applicant was removed from the United States to Honduras on June 11, 1993 from Houston, Texas.

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.