



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: SEP 03 2008

[EAC 07 192 50835, appeal]  
[EAC 06 363 74971]

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: 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.

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 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 06 363 74971 after the initial registration period had closed. The director denied that application on May 30, 2007, after determining that the applicant had failed to establish he was eligible for late initial registration. The director also found that the applicant had not established that he continuously resided in this country since December 30, 1998.

On appeal, the applicant states:

I am submitting this appeal because I feel the Service made an unfair decision regarding my case. I have demonstrated that I have been present in the US during the TPS period and that I am a native of Honduras. I applied during the registration period and was denied and then I applied again within 60 days of the expiration or termination of the qualifying condition in order to be considered for late registration period. Therefore I am asking the Service to review their files and they will find my previous application and it will confirm what I am saying. Please consider my case and make a well and justified decision. I am resubmitting evidence as to my 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 application with Citizenship and Immigration Services on September 28, 2006.

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.

On February 5, 2007, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in this country. However, he did not submit any evidence to establish that he was eligible for late initial registration.

On appeal, the applicant states that he applied during the registration period and was denied and then he applied again within 60 days of the expiration or termination of the qualifying condition in order to be considered for late registration period. However, on his September 28, 2006 Form I-821, he indicates it is his first application to register for TPS and the record reflects no earlier filing. He also submits evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. 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.

On appeal, the applicant submits evidence including copies of driver's license receipts from the Texas Department of Public Safety, an automobile insurance policy, pay stubs and a cell phone service agreement showing his activation date beginning on December 20, 1998 and ending on December 16, 1999. This documentation along with that already contained in the record establishes that he had continuously resided in the United States from December 30, 1998 and been continuously physically present since January 5, 1999. It is determined that the applicant has established his continuous residence and continuous physical presence during the required time periods. 8 C.F.R. § 244.2 (b) and (c). Consequently, the applicant has overcome the director's determination concerning one ground for denial. Nevertheless, the applicant remains ineligible for TPS due to his late filing, as detailed above.

It is noted that on October 7, 2002, the applicant was granted the opportunity to voluntarily leave the United States by November 21, 2002 by an Immigration Judge in New Orleans, Louisiana. The Judge's order further stated that if he failed to depart, the privilege of voluntary departure was withdrawn and the applicant was ordered deported from the United States to Honduras. The record does not show that he departed this country as ordered. It is further noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the Acting District Director of the New Orleans, Louisiana, office of Citizenship and Immigration Services, (formerly the Immigration and Naturalization Service) on November 22, 2002.

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.