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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: [REDACTED] Office: California Service Center
[WAC 05 069 75465]

SEP 18 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 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 late initial TPS application on December 8, 2004, under CIS receipt number WAC 05 069 75465. The director denied the application on February 23, 2006, because the applicant failed to establish that he was eligible for late initial registration for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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. 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.

To qualify for late registration, the 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 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 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).

In a December 29, 2005 notice of intent to deny, the applicant was requested to submit his birth certificate; and, evidence of: his identity and nationality; his continuous residence and continuous physical presence in the United States, evidence of his eligibility for late initial registration for TPS; and the final court disposition of an arrest by the Houston Police Department, on August 12, 1992 for Theft.

It is noted that the final court disposition is not in the record. However, the record reflects that the applicant submitted a Police Clearance from the City of Houston Police Department which indicates that on August 12, 1992, the applicant was charged with "THEFT \$20 – \$200;" and, on August 14, 1992, the applicant was sentenced to 10 days at the County Jail.

On appeal, counsel asserts that the applicant is eligible for late initial registration as the applicant has had a pending application for asylum since 1999. Contrary to counsel's claim, there is no record of an asylum application pending since that time. Counsel provided a copy of a Form I-589 (Application for Asylum), which was signed and dated on April 21, 2005. The record indicates, however, that the applicant had an Application for Adjustment of Status, Form I-485, pending since 1996. That application was denied on June 8, 2004, and the applicant filed a motion to reconsider that was also denied on March 14, 2005. The initial TPS application was filed on December 8, 2004. Therefore, the applicant meets one of the criteria for late initial registration described in 8 C.F.R. § 244.2(f)(2).

However, the application may not be approved at this time as the applicant has failed to establish the requisite continuous residence and continuous physical presence in the United States. It is noted that the applicant self-

deported when he departed the United States in December 2000. He returned to the United States in January 2001. His continuous residence, therefore, began anew in January 2001, upon his return. The applicant has, therefore, failed to establish his continuous residence from December 30, 1998, and his continuous physical presence from January 5, 1999 to the date of filing the application for TPS.

It is also noted that the record reveals that the applicant was placed in deportation proceedings and was ordered deported to Honduras by the Immigration Judge, on June 11, 1990. The applicant self-deported to Honduras in December 2000.

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.