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U.S. Citizenship and Immigration Services
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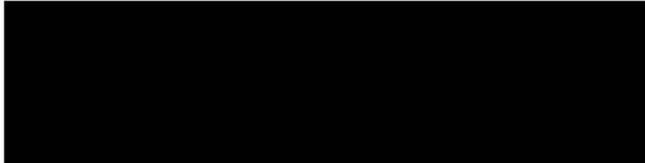
FEB 24 2010

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE:
[EAC 09 071 50560]
[REDACTED] [therein]

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 Vermont Service Center Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).


Perry Rhew
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 claims to be a 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 director denied the application because the applicant failed to establish that he was eligible for late registration.

On appeal, counsel asserts that the applicant is eligible for late registration as he was admitted as a conditional permanent resident (CR-1) on May 14, 1995. Counsel asserts that the applicant's Form I-751, Petition to Remove Conditions on Residence, was pending during the initial registration period.

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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with U.S. Citizenship and Immigration Services (USCIS) on January 5, 2009

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The record reflects that on December 2, 1991, a removal hearing was held and the immigration judge ordered the applicant deported from the United States. On January 9, 1992, a Form I-205, Warrant of Deportation, was issued. A Form I-166 dated February 24, 1992, was sent to the applicant's address of record, which demanded the applicant to surrender for removal on March 16, 1992. The applicant, however, failed to appear as required.

On March 1, 1994, the applicant was married to a United States citizen in Bronx, New York. Service records reflect that the applicant self-deported on May 1, 1995. On May 14, 1995, the applicant was accorded status as a conditional permanent resident (CR-1). On May 2, 1997, the applicant filed a Form I-751. A Judgment of Divorce dated October 8, 1998, was filed with the New York County Clerks Office on November 18, 1998.

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 USCIS. 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).

On February 12, 2009, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his identity and evidence of his qualifying physical presence in the United States since January 5, 1999. The applicant, in response, provided documentation establishing his identity, residence and physical presence in the United States.

The director determined that based on the Judgment of Divorce dated October 8, 1998, the applicant had failed to establish he was eligible for late registration and denied the application on June 12, 2009.

The applicant did not disclose his deportation on his Application for Immigrant Visa or at the time of his interview at the American Embassy in Tegucigalpa, Honduras on January 31, 1995. The applicant failed to satisfy the requirements of Part 2a¹ of the Form I-751 because of his 1998 divorce. The applicant did not file a new Form I-751 to satisfy the requirements of Part 2d² until 2006. The failure to satisfy the requirements of the Form I-751 rendered the applicant's permanent residence status null and void as of May 14, 1997. The failure to disclose his deportation also rendered the applicant's application change of status null and void. As such, the applicant did not have an application for change of status pending during the initial registration period. Consequently, the director's decision to deny the application for TPS will be affirmed.

An alien applying for TPS 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.

Finally, the record indicates that a Form I-212, Application for Permission to Reapply for Admission into the United States After Removal or Deportation, was filed by the applicant on July 17, 1996. There is no indication in the record that this application has been adjudicated to date.

ORDER: The appeal is dismissed.

¹ Require an ongoing marriage and a joint appearance with the petitioning spouse.

² Marriage entered in good faith, but was terminated due to divorce/annulment.