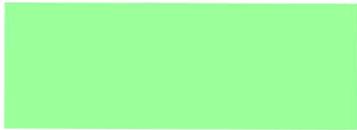




U.S. Citizenship
and Immigration
Services

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DATE: **AUG 01 2013**

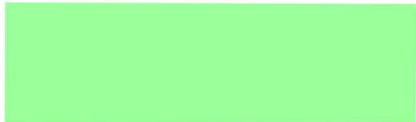
Office: VERMONT SERVICE CENTER

FILE:

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting 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 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. The director also denied the application because the applicant failed to establish continuous physical presence in the United States due to his absences from 2005 to 2009.

On appeal, counsel argues that because U.S. Citizenship and Immigration Services did not initiate recession proceedings within five years of adjustment, the immigration judge has sole authority to determine whether the applicant should be stripped of his lawful permanent resident status. Counsel states that the applicant is currently in removal proceedings and no final order has been issued by the immigration judge. Counsel asserts that as a lawful permanent resident (LPR), the applicant is afforded the privilege of traveling aboard and the absences should not disqualify him from establishing eligibility 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 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 Secretary 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.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section. The term brief, casual and innocent absence, means a departure from the United States in which each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until January 5, 2015, 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 fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. The regulation at 8 C.F.R. § 244.2(g) provides if the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration.

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 U.S. Citizenship and Immigration Services (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).

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that on April 2, 1993, the applicant's former spouse filed a Form I-130, Petition for Alien Relative, on his behalf, which was approved on April 19, 1993. On August 18, 1997, the legacy Immigration and Naturalization Service received a letter dated August 11, 1997 from the former spouse requesting that the petition be withdrawn. On March 18, 1999, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 8, 1999, the petition was automatically revoked as of the date of approval. 8 C.F.R. § 205.1. On September 20, 2000, the district director approved the Form I-485.

As there was no valid immigrant visa on September 20, 2000, the approval of the Form I-485 was in error. The AAO is not required to approve an application where eligibility has not been demonstrated, merely because the Form I-485 was approved in error.

Since the Form I-130 was revoked on March 18, 1999, more than five months before the end of the initial registration period on August 20, 1999, the 60-day filing period prescribed in 8 C.F.R. § 244.2(g) did not apply in the applicant's case. The applicant, however, did not file his TPS application until November 18, 2011.

Counsel's assertions on appeal are not persuasive. It is well established that immigration judges have no jurisdiction to decide visa petitions, a matter which is solely within the authority of the district director. *Matter of Wiesinger*, 16 I&N Dec. 480 (BIA 1978); *Matter of Kotte*, 16 I&N Dec. 449 (BIA 1978). In *Matter of Aurelio*, 19 I&N Dec. 458, 460-61 (BIA 1987), it was held that immigration judges lack jurisdiction over matters involving the automatic revocation of relative visa petitions.

The applicant has not submitted credible evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

The second issue to be addressed is whether the applicant has maintained continuous physical presence in the United States. The director determined that the applicant had been absent from the United States for 429 days between 2005 and 2009.

Based on USCIS records and the departure and entry stamps in the applicant's Honduran passport, the AAO has determined that the applicant had been absent from the United States for 478 days between December 28, 2000 and August 7, 2009.

On July 23, 2012, the applicant was requested to submit a statement explaining the nature of these absences. The applicant, however, failed to provide the requested statement. Counsel's assertion, on appeal, that the applicant was a LPR during the initial registration period and, therefore, the absences should not disqualify him from TPS eligibility is not supported by the record. The applicant has not established continuous physical presence in the United States during

(b)(6)

NON-PRECEDENT DECISION

Page 5

the requisite period due to his absences. Consequently, the director's decision to deny TPS on this ground will also be affirmed.

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 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.

ORDER: The appeal is dismissed.