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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: NOV 20 2007

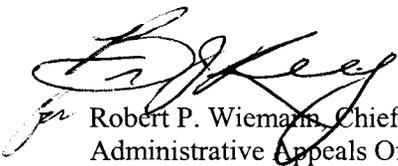
IN RE: Applicant: [REDACTED]

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 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, 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 seeking 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 had failed to establish that he was eligible for late registration.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

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.

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 time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed his TPS application on June 8, 2002.

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 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 Citizenship and Immigration Services (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).

The record indicates that the applicant filed an initial TPS application on August 25, 2000, under receipt number EAC 01 092 50824. The director denied that application on February 1, 2002, after determining that the applicant had failed to establish that he was eligible for late registration, and that he had also failed to establish continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing his application. Although the applicant was advised that he could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

The applicant filed the current TPS application on June 8, 2002, under receipt number EAC 02 262 51804. In a notice of intent to deny dated August 28, 2002, 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 to establish nationality and identity, and evidence to establish continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing his application. In response, the applicant furnished a copy of his Honduran passport and evidence to establish residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on February 18, 2003.

On appeal, the applicant asserts that he did not receive any notice informing him of the type of evidence he needed to submit in order to proceed with his application for TPS.

This assertion of the applicant is without merit. As noted above, the NOID, issued by the director on August 28, 2002, listed the evidence the applicant was requested to submit, and that the applicant did respond to the NOID on September 7, 2002. However, because the applicant, in response, failed to present evidence to establish eligibility for late registration, the director denied this application.

It is noted that in support of the applicant's initial application (EAC 01 092 50824), the applicant's former counsel asserted that the applicant was eligible for late registration because he had an application for asylum pending during the initial registration period. In support of this assertion, he submitted copies of the applicant's Employment Authorization Cards issued in 1994, 1995, and 1996.

A review of the record indicates that on March 11, 1994, the applicant filed Form I-589, Request for Asylum in the United States, under file number [REDACTED]. On September 26, 1996, the New Jersey Asylum Office notified the applicant that his claim for asylum had not been granted, but that his case had been referred to an immigration judge (IJ), and that his request for asylum will again be considered when he appears before the IJ. Form I-221, Order to Show Cause and Notice of Hearing, was issued on October 1, 1996. In removal proceedings held on January 23, 1997, the applicant failed to appear. Therefore, the IJ determined that the applicant's failure to appear and proceed with any applications for relief from deportation constitutes an abandonment of any pending applications and any applications the applicant may have been eligible to file, and that those applications are deemed abandoned and denied for lack of prosecution. The IJ ordered the applicant removed to Honduras *in absentia*. A Form I-205, Warrant of Removal/Deportation, was issued on January 26, 1998. There is no evidence in the record that the applicant appealed the IJ's decision or filed for any other form of relief or review. Therefore, the applicant did not have an application for asylum or any other form of relief pending or approved during the initial registration period of January 5, 1999 through August 20, 1999.

The applicant has failed 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 TPS application will be affirmed.

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.