U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Texas Service Center Date: JAN 30 2003
SRC 02 143 53973

IN RE: Applicant: [redacted]

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations 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. 1254a.

The director determined that the applicant failed to submit all the evidence requested to establish that: (1) he has been continuously physically present in the United States from January 5, 1999 to the date the application was filed; and (2) he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant asserts that he has been living in the United States from 1998 to the present. He states that at the time of the first application, he was economically in bad shape, his job was cancelled, and he did not have any money; therefore, he gave priority to the other necessities thinking that he would solve this later. The applicant further states that he did not apply because of his fear of being deported. He submits additional documents as evidence of his residence in the United States.

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 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 condition described in paragraph (f)(2) of this section.

The term continuously resided as used in 8 C.F.R. 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of 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 used in 8 C.F.R. 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since January 5, 1999. 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 record reflects that the applicant filed his TPS application on April 4, 2002. In a notice of intent to deny dated June 6, 2002, the applicant was requested to submit: (1) a copy of his original birth certificate with an English translation; (2) evidence to show that he has continuously resided in the United States since

December 30, 1998; (3) evidence to show that he has been continuously physically present from January 5, 1999 to the date of filing the application; and (4) evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. Because the applicant's response did not contain all the requested information, the director denied the application.

The director maintained that aliens applying under the provisions for late initial registration must prove that they are eligible because during the initial registration period of January 5, 1999 through August 20, 1999, they fell within the provisions described in paragraph (f)(2) above.

While the applicant, on appeal, submits additional evidence of his residence in the United States, no evidence was furnished to establish that he met the qualifications for late registration, and to overcome the findings of the director pursuant to 8 C.F.R. 244.2(f)(2).

The burden of proof is upon the applicant to establish that he 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.