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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

4/12/04

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 office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

for Robert P. Wiemann, Director
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 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 failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish his continuous physical presence in the United States during the requisite period.

On appeal, the applicant provides a brief statement and additional documentation.

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

The first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

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 in the United States 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, 2005, upon the applicant's re-registration during the requisite time period.

As stated in 8 C.F.R. § 244.1 "register" means "to properly file, with the director, a completed application with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 10, 2002.

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 own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed his application for TPS on June 10, 2002, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On July 25, 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 director determined that the applicant had failed to establish he was eligible for late registration. The director denied the application on May 21, 2003.

On appeal, the applicant states he does not meet "other conditions," but he would like to see if his good moral character would be considered, and that he has never been involved in any criminal activities.

The applicant provided no additional documentation on appeal to demonstrate that he is eligible for late registration. Consequently, the applicant has not established that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The applicant has not overcome this part of the director's decision. Consequently, the director's decision to deny the application on this ground is affirmed.

The second issue raised by the director to be addressed in this proceeding is whether the applicant has established his continuous physical presence in the United States since January 5, 1999.

The phrase 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 phrase 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 phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

The applicant was requested on July 25, 2002, to submit evidence establishing his continuous physical presence in the United States during the requisite periods. The applicant, in response, provided a few receipts for 1997.

The director determined that the applicant had provided insufficient evidence to establish that he was continuously physically present in the United States since January 5, 1999.

On appeal, the applicant states in pertinent part:

I first entered the United States on January 29th 1997.

I have never traveled outside the country so I been [sic] physically present in the United States since I've entered. So far it has proven to be a hardship for me to gather evidence to show that I have been physically present in the country.

I can not [sic] obtain a letter of employment because the employers are afraid to provide such, for they fear the penalties from the INS because I have not been granted employment authorization by the INS. I am unable to obtain a state issued ID, open a bank account, get a phone in my name and all this because I do not have a valid social security or a valid Employment Authorization from INS.

It has been very frustrating trying to obtain any thing [sic] in my name (state ID SS#, bank account, phone) because all this time I am and have been illegal in this country.

At this time I am unable to obtain any other evidence to prove that I have been here in the United States.

The applicant provided two affidavits from persons testifying that the applicant is "a responsible and hard working person," and that they have known the applicant since "March 1997." The applicant also provided a letter from [REDACTED] certifying that the applicant lives at [REDACTED] since October 15, 1997.

The applicant has provided no additional credible evidence to establish that he has been continuously physically present in the United States during the required timeframes. The applicant has failed to establish that he has met the criteria described in 8 C.R.R. § 244.2(b). Consequently, the director's decision to deny the application on this ground is also affirmed.

Beyond the decision of the director, the applicant has failed to present evidence to establish his identity. The applicant has also failed to present evidence to establish that he has been continuously residing in the United States since December 30, 1998. Therefore, the application must also be denied for these reasons.

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.