



U.S. Citizenship
and Immigration
Services

WA 1

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

AUG 29 2004

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:

[REDACTED]

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, Nebraska Service Center. In a subsequent motion to reopen, the director affirmed his previous decision to deny the application. The case 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 after determining that the applicant had failed to establish that he had been physically present in the United States since January 5, 1999, and that he had continuously resided in the United States since December 30, 1998. The director also determined that the applicant had not provided the requested evidence to establish his identity.

On appeal, counsel submits a brief statement. Counsel states that he is not submitting a separate brief of additional evidence.

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.

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.

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 or her own statements. 8 C.F.R. § 244.9(b).

The issues raised by the director to be addressed in this proceeding are whether the applicant has established his continuous residence in the United States since December 30, 1998, and continuous his physical presence in the United States since January 5, 1999. The applicant must also have been in the United States during the requisite timeframe and otherwise satisfy the requirements under 8 C.F.R. § 244.2, as stated above.

In a request for evidence dated August 30, 1999, the applicant was requested to submit evidence establishing his qualifying continuous residence and his physical presence in the United States during the requisite periods. The applicant was also requested to submit evidence establishing his identity. In response, the applicant submitted a copy of a Honduran birth certificate, and a 1997 money order receipt.

The director determined that the applicant had provided insufficient evidence to establish that he had continuously resided in the United States since December 30, 1998, and that he had been continuously physically present in the United States since January 5, 1999. The director also determined that the applicant provided insufficient evidence to establish his identity. The director denied the application on February 1, 2001.

In a subsequent motion to reopen, dated February 8, 2003, the director found that the evidence submitted on motion did not establish the applicant's continuous residence in the United States since December 30, 1998, and

continuous physical presence in the United States since January 5, 1999. Consequently, the director affirmed his previous decision to deny the application.

On appeal, Counsel states:

The decision to deny was not based on substantive evidence. Sufficient evidence was submitted but the reviewing officer, who is not familiar with the Hispanic culture, found the explanation and evidences unacceptable. The officer 'nit piks' that receipts were 'hand written' or that some receipts state 'Rene Fuentes and others 'Jose Rene Fuentes.' The officer accuses that evidence was fabricated and is not a qualified expert. The decision smacks of outright prejudice.

Counsel provided no additional information or documentary evidence in support of the appeal to establish that the applicant had continuously resided in the United States, and had 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) and (c). For these reasons, the application may not be approved.

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.