



U.S. Citizenship
and Immigration
Services

MI

[Redacted]

FILE: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date: **AUG 24 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: 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent identity unwarranted
disclosure of information

10/24/04 10:31 AM

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his identity, and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submitted 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.

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.

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. 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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on June 30, 2003.

The burden of proof is upon the applicant to establish that he 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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application 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/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 21, 2003, 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 establishing his identity, and his qualifying continuous residence and continuous physical presence in the United States.

The director's decision noted that the applicant had failed to respond to the request for additional evidence and the director, therefore, determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 18, 2003.

On appeal, the applicant submitted additional evidence relating to his qualifying continuous residence and continuous physical presence in the United States. In addition, the applicant's statement indicated that he did not apply for TPS in the past because he "was always told that this could be a scam to have all of us residents from Honduras deported back to our country." The applicant stated he wanted to apply when he saw that the program worked, and that unspecified persons had told him that new applicants could apply if they had enough evidence of physical presence in the United States prior to January 1999.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant's statement that he feared being deported if he applied does not meet the regulatory requirements to establish that he is eligible for late registration. It is noted that on the Form I-821, Application for Temporary Protected Status, the applicant indicated that he had entered the United States on a "student visa" at Houston, Texas, in February 1994, and that he was currently out of status as an "overstay student." The applicant, however, did not submit photocopies of his arrival and departure record, the visa pages of his passport, his Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, or other evidence to establish that he had been in valid nonimmigrant status during the initial registration period of January 5, 1999 through August 20, 1999, and applied for Temporary Protected Status within 60 days of the termination of that status. The applicant has not submitted any 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 conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on July 21, 2003 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States.

The director's decision indicated that the applicant had failed to respond to the request for additional evidence, and, therefore, the director concluded that the applicant had failed to establish his identity, and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submitted the following documentation in support of his application:

1. A letter from the pastor of Iglesia La Fe en Jesucristo, Kansas City, Kansas, attesting to the applicant's membership since November 10, 1998, and a ledger of donations made to the church;
2. A letter from Under-Tech, Inc., Kansas City, Missouri, stating that he applicant worked for the company from May 14, 1997 to July 14, 2002;
3. Photocopies of bills from Missouri Gas Energy, City of Kansas, Missouri Water Services Department, Kansas City Power and Light;
4. Photocopies of the applicant's current and expired Missouri Driver License, expiration dates as of June 14, 1997, June 4, 2000, June 14, 2003, and July 28, 2006;
5. A letter from Bank of America, Raytown, Missouri, stating the applicant has had an account since January 21, 1995;
6. Letters from Kansas City Power and Light, Kansas City, Missouri, Water Services Department, and Missouri Gas Energy indicating the applicant has paid bills on time since June 23, 1997;
7. Photocopies of the applicant's Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return, for the years 1995 through 2002;
8. Photocopy of a birth certificate naming the applicant as father of a child born in Jackson County, Missouri, on July 11, 1999; and,
9. Photocopies of the loan histories dated June 27, 1997 through July 14, 2003, from Countrywide Home Loans, Simi Valley, California, detailing mortgage, tax, and insurance payments on the applicant's mortgage at the address listed as his home on the application.

The applicant, on appeal, has submitted evidence to establish his identity, and his qualifying continuous residence and continuous physical presence in the United States during the requisite period. He has, therefore, established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the applicant has overcome this element of the director's decision to deny the application.

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 fully meet this burden.

ORDER: The appeal is dismissed.