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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: 11/02/2011

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.

Robert P. Wiemann, Director
Administrative Appeals Office

Administrative Appeals Office
U.S. Citizenship and Immigration Services
11/02/2011

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DISCUSSION: The application was denied by the Director, Vermont 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 applying for 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 qualifying continuous physical presence in the United States.

On appeal, the applicant submits 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 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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 1, 2002.

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).

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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).

On December 16, 2002, the director requested the applicant to submit evidence establishing his eligibility for late registration. The applicant was also requested to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States.

A review of the record reveals that the applicant submitted the following documentation in support of his initial application, and in response to the director's request for additional evidence:

1. A letter from ██████████ Immigration Services, Catholic Social Agency, Diocese of Allentown, Berks County Office, Reading, Pennsylvania, dated June 26, 2002, stating that the applicant had not timely filed his Form I-821 because he "didn't have any money to file and didn't have his birth certificate;"
2. An affidavit, dated January 4, 2003, from ██████████ caddie master at the Berkshire Country Club in Reading, Pennsylvania. ██████████ states that he has known the applicant since 1998, and that the applicant has worked for him as a caddie;
3. An affidavit, dated December 29, 2002, from ██████████ stating that he has known the applicant since 1997, and that the applicant has not left the country since that date;
4. A photocopy of the applicant's archived employee earnings register from People Unlimited, Inc., indicating that checks were issued to the applicant from November 11, 1998 through November 24, 1999, except for the months of September and October 1999;
5. A photocopy of the applicant's earnings statement from People Unlimited, Inc., dated March 28, 1999;
6. Photocopies of the applicant's Honduran birth certificate, with English translation. One of the birth certificates was issued in Honduras on May 8, 1991, the other on August 19, 1991;
7. A photocopy of the applicant's 1996 Internal Revenue Service (IRS) Form W-2, indicating income of \$10,993.85 from Advance Personnel Temporary Service, Reading, Pennsylvania;
8. A photocopy of a letter to the applicant, dated November 26, 1996, from First Collect, Durham, North Carolina, stating that he has a balance due of \$115.00 to Premier Health Care Services for services performed on May 14, 1996;
9. A photocopy of a letter, dated May 29, 2002, from ██████████ Reading, Pennsylvania, stating that the applicant is her brother and has been residing with her since 1991;
10. Photocopies of earnings statements from Advance Personnel Services, Inc., showing payments to the applicant for the weeks ending July 15, 1995, January 26, 1996, February 23, 1996, April 26, 1996, June 10, 1996, March 7, 1997, and July 27, 2000;
11. A photocopy of a letter from Accounts Recovery Bureau, Inc., Reading, Pennsylvania, dated August 28, 1996, showing a balance due of \$81.20;

12. Photocopies of earnings statements from United Temporary Labor, Inc., showing payments to the applicant for the weeks ending February 4, 2000, March 24, 2000, March 31, 2000, and July 7, 2000; and,
13. A photocopy of the applicant's 1999 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statements, indicating an income of \$2282.28 from the Berkshire Country Club.

The director determined that the applicant had failed to establish his eligibility for late registration, and his qualifying continuous physical presence in the United States during the requisite time period. The director denied the application on June 17, 2003.

On appeal, the applicant submits the following additional documentation:

14. A letter, dated July 6, 2003, from [REDACTED] Wyomissing, Pennsylvania, stating that the applicant has caddied for him at the Berkshire Country Club "for the past 5 years;"
15. A letter, dated July 3, 2003, with an unidentifiable signature, stating that the applicant has been a caddie at the [REDACTED] Elverson, Pennsylvania, "for the past 5 years;"
16. A photocopy of the applicant's 1995 IRS Form W-2, indicating an income of \$8559.82 from Advance Personnel Temporary Service, Reading, Pennsylvania;
17. A photocopy of the applicant's 2002 IRS Form W-2, indicating an income of \$1,147.44 from Schaeffer Staffing Services, Inc., Reading, Pennsylvania;
18. Photocopies of earnings statements from Advance Personnel Temporary Services, Inc., for the one-week pay periods ending April 4, 1997, and August 8, 1997; and,
19. A photocopy of a utility bill issued to the applicant by Metropolitan Edison Co., Allenhurst, New Jersey, for the period January 16, 1996 through February 13, 1996.

The record confirms that the applicant filed his Form I-821 after the initial registration period had expired. The applicant has submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821 within the initial registration period. 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).

It is noted that No.'s 6, 7, 8, 11, 17, 19, and 20 (above) pre-date the requisite time periods for establishing qualifying continuous physical presence in the United States. No's 1, 2, 3, 9, 15, and 16 consist solely of personal affidavits. Only No.'s 4, 5, 10, 12, 13, and 18 contain corroborative evidence concerning the applicant's physical presence during the requisite time period. Based on these items, it appears that the applicant was physically present in the United States from on or about November 1998 to on or about November 1999 (No.'s 4, 5, and 13); from on or about February 2000 to on or about July 2000 (No's 10 and 12); and for at least some part of 2002 (No. 18). However, there is no corroborative evidence to establish that the applicant was physically present in the United States for the period from on or about July 2000 through on or about January 1, 2002. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support his assertion of having been continuously physically present in the United States throughout the requisite qualifying time period; however, no corroborative evidence has been provided. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous physical presence.

Based on a review of the record, as discussed above, it is concluded that the applicant has failed to overcome the reasons cited for the director's denial. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that, beyond the decision of the director, the applicant has also failed to submit sufficient evidence to establish his continuous residence in the United States since December 30, 1998.

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.