



U.S. Citizenship
and Immigration
Services

WMI



FILE:



Office: VERMONT SERVICE CENTER

Date:

AUG 31 2004

IN RE:

Applicant:



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.


for Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 residence and his continuous physical presence in the United States during the requisite periods.

On appeal, the applicant provides a brief statement and 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.

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 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 application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 22, 2003.

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).

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 record of proceedings confirms that the applicant filed his application after the initial registration period had closed. In a notice of intent to deny, dated June 25, 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). In response, the applicant did not address the issue of late registration.

The director determined that the applicant had failed to establish he was eligible for late registration. The director denied the application on August 11, 2003.

On appeal, the applicant provided no documentary evidence 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, and the application must be denied for this reason.

The second issue raised by the director to be addressed 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. 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 the above-mentioned intent to deny, the applicant was also requested to submit evidence establishing his continuous residence and his continuous physical presence in the United States during the requisite periods. The applicant, in response, provided two money order receipts for 1999, and one affidavit stating that the applicant has rented a room from [REDACTED] since 1998.

The director determined that the applicant had provided insufficient evidence to establish that he was continuously residing in the United States since December 30, 1998, and that he was continuously physically present in the United States since January 5, 1999. The director also denied the application for these reasons.

On appeal, the applicant states, in pertinent part, the following:

I am attaching information as you requested, I had sent already on the first time the original information, now I am sending again the proof of residence because I purchased furniture, the employment use to pay me only in cash, because I don't have a SS# to report, this is why I have a certified letter. I am working, in addition I am not able to proof [sic] mailing because what I get to [sic] the mail is only coupons [sic] discounts.

The applicant submitted a "WORK CERTIFICATION," dated August 23, 2003, which states in part, the following:

I F [REDACTED] BY THE WAY OF THE PRESENT I WOULD LIKE TO CERTIFY THAT MR. [REDACTED] RESIDING AT: [REDACTED] IN [REDACTED] HAS BEEN ONE OF MY EMPLOYEE [SIC] FOR US, WORKING AS CONTRUCTION HELPER SINCE OCTOBER 30TH. [SIC] OF 1998 UNTIL THE PRESENT TIME, HIS WEEKLY SALARY IS OF \$300 DOLLARS FOR A TOTAL OF 40 WORKING HOURS PAID IN CASH.

The applicant also provided a receipt, dated June 22, 1999, from "New Millenium Furniture," which indicates that the applicant paid \$100 cash for a twin size bed.

On appeal, the applicant has provided no additional credible evidence to establish that he has continuously resided in the United States, and has been continuously physically present in the United States during the required timeframes. The affidavit, without supporting documentary evidence, is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I & N Dec. 190 (Reg. Comm. 1972). The beneficiary has offered no explanation as to why the receipt and the affidavit were available to be presented on appeal, but not at the time of the filing of the application on May 22, 2003. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*, 582, 591. Consequently, the director's decision to deny the application for temporary protected status for this reason will also be affirmed.

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.