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U.S. Citizenship  
and Immigration  
Services

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**DEC 14 2004**



FILE:



Office: TEXAS SERVICE CENTER Date:

[SRC 02 227 54162]

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

**DISCUSSION:** The application was denied by the Director, Texas Service Center, on December 20, 2002. The applicant filed a timely appeal that was reviewed and dismissed by the Director, Administrative Appeals Office (AAO), on July 17, 2003. The applicant filed a late motion to reopen that was denied by the service center director on September 16, 2003. The applicant then filed an appeal to that decision. The case is now before the AAO on appeal. The appeal will be dismissed, and the previous denial by the AAO director will be affirmed.

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, Texas Service Center, denied the application because the applicant failed to establish he was eligible for late registration. The AAO director dismissed the appeal, affirming the service center director's determination that the applicant had not established that he was eligible for late registration.

Following the AAO director's dismissal of the appeal, the applicant filed a motion to reopen in which he asked that his case be re-opened and that he be given "the opportunity to be legal in this country in which with a lot of difficulty [he has] lived here without having a better opportunity in employment and also to pay [his] taxes [sic]." He also stated that he has lived in the United States since 1997, and would like to work and go to school legally in this country. The applicant further stated that he did not submit his application when TPS opened for the first time because of his economic situation during that period. The applicant also submitted additional documentation in support of the motion, consisting of photocopies of: the biographic page of his Honduran passport issued by the Consulate General, Miami, Florida, on October 23, 2002; an undated student photo identification card from The English Center, Miami, Florida; generic store receipts and generic money order receipts dated in the years 1998 through 2003; two billing statements dated in 1999 from the Penalver Clinic, Miami, Florida; and, PrimeCo Personal Communications billing statements for various months in 1999 and 2000.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy and must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(4) states in pertinent part that: "[a] motion that does not meet applicable requirements shall be dismissed."

The documentation submitted on motion pertained to the issue of the applicant's continuous residence and continuous physical presence in the United States during the requisite periods, and not to the reason for denial identified by the service center director and AAO director, as to whether the applicant is eligible for late registration under the provisions of 8 C.F.R. § 244.2(f)(2) and (g). The applicant's stated reason for not filing during the initial registration period does not meet the regulatory requirements for late registration. On motion, the applicant did not provide any new evidence pertaining to his eligibility for late registration. The applicant did not submit evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). In addition, the records of Citizenship and Immigration Services (CIS) do not reflect an earlier TPS application under the applicant's name and date of birth.

The applicant did not assert any new facts to be provided at the reopened proceeding. The applicant did not submit any evidence on motion to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). In addition, the motion to reopen was untimely filed. Therefore, the director, Texas Service Center, denied the motion to reopen on September 16, 2003.

The applicant filed an appeal to the service center director's denial of his motion to reopen, and this matter is now before the AAO.

On appeal, the applicant asks for another chance to work and live legally in this country. The applicant states that he did not have the economic means or the information he needed in order to apply earlier. The applicant does not submit additional evidence on appeal.

These reasons provided by the applicant for not filing his TPS application earlier do not fall within the provisions of 8 C.F.R. § 244.2(f)(2). It is noted that on the Form I-765, Application for Employment Authorization, and on the Form I-821, Application for Temporary Protected Status, the applicant indicated that he entered the United States as a "visitor" and listed his current immigration status both as an "overstay" and as an F-1, nonimmigrant student. The applicant, however, did not provide: photocopies of his passport; visa pages; Form I-94, Arrival and Departure Record; Form I-539, Application to Extend/Change Nonimmigrant Status; Form I-20, Certificate of Eligibility for Nonimmigrant Student Status; or other evidence of having been in lawful status at the time of the initial registration period, and/or of filing within 60 days of the termination or change of that condition. On appeal, the applicant has not submitted any evidence that would overcome the findings of the service center and AAO directors. Therefore, the appeal must be dismissed.

Beyond the decision of the directors, it is noted that the applicant has not established his continuous residence and continuous physical presence in the United States during the requisite periods. The service center director informed the applicant in the Notice of Intent to Deny that the evidence submitted as proof of his residence and physical presence was not convincing. At that time, the director requested that originals of those documents be submitted. It is noted that the applicant failed to submit any originals of the documents. In addition to those items submitted with the initial application, many of the additional documents submitted in response to the Notice of Intent to Deny, on appeal, and on motion, also appear to have been altered. 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 application. It is incumbent upon the applicant 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 (BIA 1988). Further, the record contains many generic store and money order receipts that cannot be directly linked to the applicant. Therefore, the applicant has not credibly established his continuous residence and continuous physical presence in the United States during the requisite periods. Because he has not met the criteria described in 8 C.F.R. § 244.2(b) and (c), the application must also be denied for these reasons.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden

**ORDER:** The appeal is dismissed, and the previous denial by the AAO director is affirmed.