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U.S. Citizenship
and Immigration
Services

prevent clearly warranted
invasion of personal privacy



MI

DEC 14 2004

FILE: [REDACTED]
[SRC 03 058 53681]

Office: TEXAS SERVICE CENTER Date:

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.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center on April 9, 2003. On May 9, 2003, the applicant filed a timely appeal to the director's decision. While the initial appeal was pending, the applicant filed a second appeal on October 10, 2003. Both appeals are now before the Administrative Appeals Office (AAO). The appeals will be dismissed.

The applicant states that he 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 his continuous residence in the United States since December 30, 1998.

On the initial appeal, the applicant submits a statement, additional evidence, and resubmits documentation that had previously been entered into the record. With the second Notice of Appeal, the applicant submits only a statement.

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 July 5, 2006, 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 initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on December 2, 2002.

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 director determined that the applicant had failed to establish his continuous residence in the United States since December 30, 1998. The director noted that although the applicant indicated on his Form I-821, Application for Temporary Status, that he had entered the United States on May 12, 1997, the record included evidence that the applicant had entered the United States on or around February 20, 1999. Therefore, the director denied the application on April 9, 2003.

On initial appeal, the applicant states that he would like to be given "the opportunity to be legal in this country in which a lot of difficulty [sic] [he has] lived here without having a better opportunity in employment and also to pay [his] taxes." The applicant also states that he has been living in the United States since 1997, and because of lack of employment and fear of being deported he did not apply "the first time." In support of the appeal, the applicant submits: [REDACTED] payment receipts stamped on January, March, April, June, and August of 1999; three Western Union receipts dated in the year 2000; and, two [REDACTED] pay stubs dated in 2002. The applicant also resubmits documentation that had previously been entered into the record including: his Honduran identification card issued on March 3, 1997; his Instituto [REDACTED] Social identification card [REDACTED] billing statements and payment receipts dated in 1998; two Vila & [REDACTED] pay stubs dated in 1998; three [REDACTED] pay stubs dated in 1997; and four rent receipts dated in 1998.

It is noted that the [REDACTED] billing statements appear to have been altered. In addition, none of the submitted pay stubs contain verifiable information about the companies that are alleged to have employed the applicant. Although the applicant certified on the Form I-821, under penalty of perjury that he had not been in immigration proceedings, the record includes documentation pertaining to the applicant's apprehension by the United States Border Patrol while attempting entry into the United States at or near Laredo, Texas, on or about February 20, 1999, and his subsequent removal proceedings. The record includes an Application for Stay of Deportation completed by [REDACTED] and signed by the applicant, which states that the applicant had been living in the United States since May 12, 1997, but left the country "because [his] father died on February 21, 1999," and that the applicant was caught on his way back into the United States. These statements are inconsistent with the applicant's apprehension on a date that precedes his father's alleged date of death. The applicant did not provide a death certificate or other corroboration of his claim. Moreover, the Form I-213, Record of Deportable/Inadmissible Alien, completed at the time of the applicant's apprehension, indicates that the applicant stated that his father was "unknown," and also answered "unknown" as to the name, birth place and residence of his father on the Form I-217. 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).

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since December 30, 1998. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

Beyond the decision of the director, the applicant has also failed to establish his continuous physical presence in the United States since January 5, 1999. The application must also be denied for this reason.

Beyond the decision of the director, the applicant also has failed to establish that he is eligible for late registration. The record of proceedings confirms that the applicant filed his initial 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 fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. *See* 8 C.F.R. § 244.2(g).

The evidence of record indicates that the applicant was in immigration proceedings during the initial registration period for Honduran nationals, and that he was granted voluntary departure to be effected on or before January 5, 2000, by order of the Immigration Judge, San Antonio, Texas. He, therefore, met one of the provisions under 8 C.F.R. § 244.2(f)(2). Pursuant to the regulation at 8 C.F.R. § 244.2(g), the applicant then had 60 days in which to file his application for TPS. The applicant, however, did not file his application for TPS until December 2, 2002, well beyond the termination date of his voluntary departure. Therefore, the application must also be denied for this reason.

The applicant submitted a second appeal on October 10, 2003. This appeal reiterates the applicant's statement that he would like to be legally in the United States and pay his taxes. He states that he is willing to demonstrate that he has lived here since 1997, and asks for another chance. The applicant does not submit any additional evidence in support of this appeal.

The submissions on the second appeal are insufficient to overcome the findings of the director and the additional reasons for denial specified above. Therefore, the second appeal is also dismissed. It is further noted that the submissions with the second appeal also would not be sufficient to be considered as a motion to reopen or motion to reconsider. *See* 8 C.F.R. § 103.5(a)(2) and 8 C.F.R. § 103.5(a)(3).

It is noted that the record contains a Warrant of Removal/Deportation dated March 4, 2000, issued by the District Director, San Antonio, Texas, based upon the final order of the Immigration Judge, San Antonio, Texas, which indicates that if the applicant failed to voluntarily depart by the specified date, his voluntary departure was withdrawn and he was subject to removal.

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 appeals are dismissed.