



U.S. Citizenship
and Immigration
Services

MM

[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: *11/16/04*

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 for
Robert P. Wiemann, Director
Administrative Appeals Office

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

On appeal, the applicant reiterated his claim of residence in the United States since 1997 and submitted additional evidence in support of his claim.

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 initial application with the Immigration and Naturalization Service, now CIS, on June 27, 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 18, 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 qualifying continuous residence and physical presence in the United States. The applicant failed to respond to the notice.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 3, 2003. On appeal, the applicant reaffirms his claim to have resided in the United States since 1997, and submits additional evidence in support of his claim. He states that he did not apply for TPS during the registration period because he was "very ill."

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 Form I-821, Application for Temporary Protected Status, 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). 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.

The applicant submitted the following documentation with the initial application for TPS:

1. a repair order from Lawrence & California Citgo in Chicago, Illinois, reflecting work performed on the applicant's car on June 10, 1998;
2. a repair order from Mufflers4Less in Chicago, Illinois, showing work performed on the applicant's car on February 21, 1997;
3. a "Patient Instructions" form issued to the applicant by Resurrection Immediate Care Centers/Callahan Clinic in Chicago, Illinois, on June 21, 1998;

4. the applicant's lease for an apartment located at [REDACTED] Chicago, Illinois, from June 2, 1997 to May 30, 1998; and,
5. a letter dated June 21, 2000, from [REDACTED] in Chicago, Illinois, stating that the beneficiary had been a student of English as a Second Language for the past three years.

The director concluded that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant submits the following additional evidence:

1. a pay statement from Creative South, Inc., in Fayetteville, Georgia, reflecting salary paid to [REDACTED] social security number [REDACTED] for the pay period from November 7, 1999 to November 13, 1999;
2. a pay statement from [REDACTED] in Robbinsville, North Carolina, reflecting salary paid to [REDACTED] social security number provided, for the pay period from September 5, 1999 to September 11, 1999;
3. a pay statement processed by ADP showing salary paid to [REDACTED] security number [REDACTED] in Chicago, Illinois, for the pay period ending December 10, 2000;
4. the applicant's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, and his IRS Form 1040, U.S. Individual Income Tax Return, for 2000;
5. a pay statement processed by ADP showing salary paid to [REDACTED] social security number [REDACTED] by Inland Midwest Corporation in Chicago, Illinois, for the pay period ending September 30, 2001;
6. the applicant's IRS Form W-2 and his Form 1040 for the year 2001;
7. a pay statement processed by ADP showing salary paid to [REDACTED] social security number [REDACTED] corporation for the pay period ending December 22, 2002; and,
8. the applicant's IRS Form W-2 and his IRS Form 1040 for the year 2002.

The applicant has provided two documents that purportedly represent work he performed in Georgia and North Carolina during the requisite period, although he has not advanced a claim to have lived in those States. It is noted that the applicant's social security number is listed on the pay statement from Creative South, Inc., a [REDACTED]. An examination of this pay statement reveals that the final number in the social security

number appears to have been altered, with a handwritten number "5" substituted. Additionally, the date of the applicant's "Patient Instructions" form appears to have been altered. The applicant's pay statement processed by ADP for the pay period ending December 10, 2000, and the applicant's IRS Form W-2 for 2000 show the applicant's social security number as [REDACTED] the social security number he listed on the Form I-821, Application for Temporary Protected Status. The applicant's pay statements processed by ADP for the pay periods ending September 30, 2001 and December 27, 2002, and the IRS Forms W-2 issued to the applicant by Inland Midwest Corporation for 2001 and 2002, show the applicant's social security number as [REDACTED] as indicated on his TPS application. Furthermore, the applicant reported his social security number on the IRS Forms 1040 for 2000, 2001, and 2002, [REDACTED]. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his claimed social security number during the requisite periods, nor has he provided any explanation for the apparent alteration in the pay statement from Creative South, Inc. and the "Patient Instructions" form.

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 failed to establish continuous residence in the United States since December 30, 1998 and continuous physical presence since January 5, 1999, as required under 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

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.