

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAY 11 2004**

[LIN 02 226 50151]

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.

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 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 determined that the applicant failed to submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director also determined that the applicant had failed to submit sufficient evidence to establish that he had continuously resided in the United States since December 30, 1998, and that he had been continuously physically present in the United States since January 5, 1999. The director, therefore, denied the application.

On appeal, the applicant submits a copy of his birth certificate, a copy of a Form I-797C, Receipt Notice, for a separate petition, and additional evidence of his residence in the United States. The applicant does not address the grounds of denial.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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 in the United States since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the current extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The record reflects that the applicant filed his TPS application on June 25, 2002. On November 19, 2002, the applicant was requested to submit: (1) evidence of date of entry into the United States prior to December 30, 1998; (2) evidence to show that he has continuously resided in the United States since December 30, 1998; (3) evidence to show that he has been continuously physically present since January 5, 1999; and (4) evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. Because the applicant's response did not contain all the requested information, the director denied the application.

Aliens applying under the provisions for late initial registration must prove that they are eligible because during the initial registration period of January 5, 1999 through August 20, 1999, they fell within the provisions described in paragraph (f)(2) above.

The applicant, on appeal, submits additional evidence of his residence in the United States. He also submits Form I-797C, Receipt Notice, dated May 21, 2001. The Form I-797C indicates that the applicant is named as the beneficiary of an Immigrant Petition for Relative, Fiance(e), or Orphan, Form I-130, filed on his behalf by his U.S. citizen sibling on April 23, 2001. However, there is no evidence that the applicant had an application for adjustment of status pending during the initial registration period January 5, 1999 to August 20, 1999, or that he met any of the other criteria for late filing, as enumerated in (f)(2) above. Therefore, the applicant has

not demonstrated that he met the qualification for late registration, and to overcome the findings of the director pursuant to 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.

In addition, the applicant has failed to submit sufficient evidence to establish that he has continuously resided in the United States since December 30, 1998, and that he has been continuously physically present in the United States since January 5, 1999. He has not met the criteria described in 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision to deny the application for temporary protected status will be affirmed on this basis as well.

The burden of proof is upon the applicant to establish that he 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.