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U.S. Citizenship
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Services

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FILE: [REDACTED]
[LIN 03 147 50767]

Office: NEBRASKA SERVICE CENTER

Date: NOV 03 2004

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, 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 establish he: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that he is appealing to show that he has been residing in the United States since September 1998.

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 as 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 parole; 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.

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.

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.

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. 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 latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed his application on March 28, 2003. The record further shows that the applicant did file an initial application for TPS on June 28, 2002. However, that application was also filed after the initial registration period.

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 Citizenship and Immigration Services (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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding 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 from January 5, 1999 through August 20, 1999, 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 the late initial registration. *See* 8 C.F.R. § 244.2(g).

On April 18, 2003, the applicant was provided the opportunity 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 nationality and identity, his residence in the United States since December 30, 1998, and his physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant failed to respond to the notice. Therefore, the director denied the application.

On appeal, the applicant claims that he has resided in the United States since September 1998. The applicant also provides evidence in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application 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 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.

As stated above, the applicant was requested on April 18, 2003, to submit evidence establishing her qualifying residence and physical presence in the United States. The applicant failed to respond. The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant furnished:

1. A copy of a letter from [REDACTED]
2. A copy of a letter from [REDACTED]
3. A copy of a statement from [REDACTED]
4. A copy of a Utah driver license issued on June 19, 2002.
5. Copies of various receipts dated October 18, 1998, October 31, 1998, September 5, 1999, September 18, 1999, October 10, 1999, November 14, 1999, March 30, 2000 and May 14, 2002.

[REDACTED], the applicant's sister, states that the applicant came to the United States in September 1998. According to [REDACTED] the applicant cannot provide evidence of his stay in the United States. [REDACTED] statement regarding the applicant's claimed presence in the United States before December 30, 1998 is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. While [REDACTED] claims that the applicant lived with her and shared in the cost of all bills, she also states that there is no evidence available to substantiate this claim. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

[REDACTED] of the Holy Rosary Catholic Church, Idaho Falls, Idaho, states that the applicant has been a member of his parish since late September 1998. According to [REDACTED] the applicant left Idaho in October 1998 and returned in 2000. However, even accepting as true [REDACTED] statement, he himself admits that the applicant was not a parishioner from October 1998 to 2000. Furthermore, [REDACTED] has not demonstrated that his knowledge of the applicant's stay in the United States is independent of his personal relationship with the applicant. If this knowledge is based primarily on what the applicant told him about his stay in the United States, then his statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Thus, he cannot attest to the applicant maintaining continuous residence and physical presence in the United States from December 30, 1998 to the filing of his application. Furthermore, the affidavit from [REDACTED] has little evidentiary weight or probative value as it does not provide basic

information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church.

In his statement, [REDACTED] claims that the applicant resided in Dallas, Texas, from November 1998 to October 1999, and in Idaho Falls, Idaho, from October 1999 to the present. According to [REDACTED] he lives with the applicant's sister, he spoke with the applicant on the phone when he was in Texas, and he saw letters that the applicant wrote to his sister. As with [REDACTED] statement is not supported by any contemporaneous evidence to support his claim. The applicant claims he has lived in the United States since 1998. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

One of the receipts is dated October 18, 1998, which indicates that the applicant was present in the United States on that date. However, this does not establish the applicant's continuous residence and physical presence in the United States during the qualifying period. The only other receipt indicating the applicant's presence prior to the entry date is dated October 31, 1998.

The applicant has submitted evidence to establish his presence in the United States from September 1999 to November 14, 1999, and, that he was in the United States in March 2000 and in May 2002. However, the applicant has not submitted sufficient evidence to establish his continuous residence since December 30, 1998, and his continuous physical presence in the United States from January 5, 1999, to the date the application was filed. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this ground 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.