



U.S. Citizenship
and Immigration
Services

MM

[Redacted]

FILE:

[Redacted]

Office: Vermont Service Center

Date: OCT 01 2004

IN RE:

Applicant:

[Redacted]

APPLICATION:

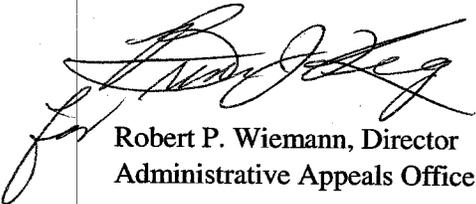
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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

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

DISCUSSION: The application was denied by the Director, Vermont 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 applying for 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 TPS late registration. The director also denied the application because the applicant failed to establish that he had been continuously physically present in the United States from January 5, 1999, to the date of filing his application.

On appeal, the applicant asserts his claim of eligibility for TPS and submits 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 TPS 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. 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 Citizenship and Immigration Services (CIS), on July 18, 2003.

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 or 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).

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 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).

On August 11, 2003, the applicant was requested to submit evidence to establish 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 to establish that he had resided in the United States as of December 30, 1998, and had been physically present in the United States from January 5, 1999, to the date of filing his application.

In response, the applicant submitted some evidence in an attempt to establish his continuous physical presence and continuous residence in the United States. He also submitted copies of his Honduran passport and photo identification; copies of his mother's Permanent Resident Card and Social Security card; a copy of a receipt notice dated July 21, 2003, for a Form I-130 filed on his behalf; and a copy of his step-father's naturalization certificate. However, he did not submit any evidence to establish his eligibility for late registration.

The director determined that the applicant had failed to establish he was eligible for late registration. The director also determined that the applicant had failed to submit sufficient evidence to establish he had been continuously physically present in the United States from January 5, 1999, to the date of filing his application. The director, therefore, denied the application on November 3, 2003.

On appeal, the applicant states that he qualifies for TPS for the following reasons: 1) he is the child of a legal alien, Ms. Juana Iglesias; 2) he is the step-child of a United States citizen; 3) he is the beneficiary of an I-130 application; 4) he entered the United States on September 14, 1998; 5) he has paid his taxes to date; and, 6) he has attended schools. The applicant also submits additional evidence in support of his claim of eligibility for TPS.

It appears that the applicant is implying that he is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) since he is a beneficiary of an I-130 application. The applicant also submits documentation indicating that he is the beneficiary of a Petition for Alien Relative, Form I-130, filed on his behalf under section 203(a)(2)(A) of the Act. To qualify for late registration, the applicant must provide evidence that he was eligible for late registration during the initial registration period from January 5, 1999 through August 20, 1999. The record indicates that the petition was not filed until July 21, 2003, almost 4 years after the closing of the initial registration period. Individuals who are awaiting preference allocation for an immigrant visa under section 203 of the Act are not eligible for late registration under 8 C.F.R. § 244.2(f)(2). Further, the evidence does not indicate an approval of the petition or that the applicant filed for adjustment of status.

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 applicant also submits on appeal a copy of letter dated August 23, 2003, from his step-father, [REDACTED] Ernesto Iglesias, who stated that that applicant has lived with him and his mother since September 14, 1998 until August 2000; and copies of two letters dated November 13, 2003, from [REDACTED]

[REDACTED] who stated that the applicant was enrolled in their English program from November 1998 to August 1999, and from November 2000 to August 2001. In addition, the applicant claims that he entered the United States on September 14, 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these statements; however, no such evidence has been provided. Affidavits from family members are not, by themselves, persuasive evidence of residence or physical presence. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the physical presence requirements described in 8 C.F.R. §§ 244.2(b). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

An alien applying for TPS 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.