



U.S. Citizenship
and Immigration
Services

11/11



FILE: [REDACTED] Office: NEBRASKA 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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

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: 1) eligibility for late registration; 2) continuous residence in the United States since December 30, 1998; 3) continuous physical presence in the United States since January 5, 1999; and, 4) identity.

On appeal, the applicant submits additional evidence.

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 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 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 evidence with the initial Form I-821, Application for Temporary Protected Status:

1. Minnesota Department of Revenue Certificate of Rent Paid 1998, indicating that the applicant paid \$3,600 in rent during the period from May 1 to December 31, 1998;
2. a letter dated July 5, 1999, from [REDACTED] teacher at Adult Basic Education, District 279 of OSSEO Area Schools, stating that the applicant has attended the school's English as a Second Language (ESL) program since September 1998;
3. the applicant's 2002 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from Twin City Beekeeping Supply, Inc., of Maple Grove, Minnesota, indicating an annual income of \$17,538.27;
4. the applicant's 2001 IRS Form W-2 from Fulfillment Systems, Inc., of Monticello, Minnesota, indicating an annual income of \$12,510.89;
5. the applicant's 2000 IRS Form W-2 from GMRI, Inc., of Orlando, Florida, indicating an annual income of \$14,184.33;
6. MoneyGram money transfer receipts for the following dates: August 13, 1998; December 15, 1998; April 30, 1999; October 25, 1999; December 25, 1999; March 20, 2000; August 15, 2000; October 18, 2001; December 5, 2001; April 13, 2002; May 10, 2002; May 20, 2003; and September 13, 2003;
7. a cover letter dated April 14, 2003, mailed to the applicant with his MoneySaver Gold Card; and,
8. a facsimile cover sheet from the National Service Company of Iowa, Inc., indicating that a document was faxed to the applicant on July 28, 2001.

On December 1, 2003, the applicant was requested to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant failed to respond to the notice.

The director concluded that the applicant had failed to establish continuous residence and physical presence in the United States during the requisite periods, and denied the application on January 30, 2004.

On appeal, the applicant submits an invoice dated December 7, 1998, from UniDale Insurance Company in St. Paul, Minnesota, for insurance policy #2346798/24.

It is concluded that the applicant has submitted sufficient evidence to establish continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. Therefore, this portion of the director's objection has been overcome and will be withdrawn.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now CIS, on November 12, 2003.

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).

As stated above, the applicant was requested on December 30, 2003, to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). 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 appeal, the applicant submits 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). Therefore, the director's decision to deny the application for this reason will be affirmed.

The third issue in this proceeding is whether the applicant has provided evidence of identity.

The applicant has failed, in response to the Notice of Intent to Deny and again on appeal, to provide a document to establish his identity, including photo and/or fingerprint as required at 8 C.F.R. § 244.9(2)(i). Therefore, the director's decision to deny the application for this reason must 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.