



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 02 249 51776]

Office: VERMONT SERVICE CENTER

Date: OCT 07 2008

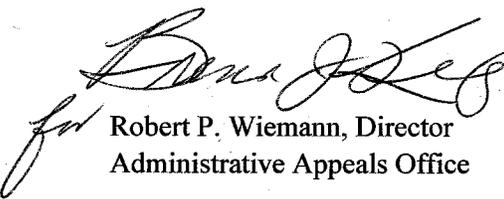
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 have 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.


for Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The initial application for Temporary Protected Status (TPS) was denied for abandonment on May 9, 2000, by the Director, Vermont Service Center. The applicant re-filed for TPS on July 22, 2002. On May 21, 2003, the application was denied by the director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras who is seeking 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 he was eligible for late registration. The director also found that the applicant failed to establish that he is a citizen or national of Honduras. It is noted that the director erred in finding that the applicant had not established his nationality. The record contains photocopies of the photo page and the biographical page of the applicant's passport, which demonstrates that the applicant is a national of Honduras. As the applicant had previously established his nationality, the issue will not be addressed in this proceeding.

On appeal, the applicant provides a brief statement and additional documents.

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.

The issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

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 the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 2, 1999. The initial application was denied for abandonment on May 9, 2000. The applicant re-filed his application for TPS on July 22, 2002.

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).

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).

The record of proceedings confirms that the applicant re-filed his TPS application after the initial registration period had closed. In a notice of intent to deny, dated March 17, 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 continuous residence and physical presence in the United States during the qualifying timeframes. The applicant was further requested to submit evidence to establish that he is a citizen or national of Honduras. The director found that the evidence submitted by the applicant did not establish that the applicant met any of the qualifying conditions for late registration. The director denied the application on May 21, 2003.

On appeal, the applicant states that he has applied for TPS "since 1999, and never received a card." The applicant submits two photocopies of Form I-797C, Notice of Action, of which one indicates that the Service received the applicant's Form I-821, Application for Temporary Protected Status, on July 2, 1999, and the other indicates that the Service received the applicant's Form I-765, Application for Employment Authorization, on July 30, 2001. As stated above, the initial TPS application was denied for abandonment on May 9, 2000. The applicant also submits a copy of his son's birth certificate showing that he was born on March 13, 2003, in Boston, Massachusetts. The applicant again supplied a photocopy of his passport as evidence of his nationality.

The applicant provided no documentation on appeal to demonstrate that he is eligible for late registration. Consequently, the applicant has not established 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 TPS is affirmed.

Beyond the decision of the director, the applicant has provided insufficient evidence to demonstrate the 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. Therefore, the application must also be denied for these reasons.



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.