



U.S. Citizenship
and Immigration
Services

MAI

[REDACTED]

FILE: [REDACTED] Office: Nebraska Service Center Date: OCT 21 2004
[REDACTED] consolidated]
[LIN 02 239 50604]

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:

PUBLIC COPY

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.

Cindy N. Gomez 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 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: 1) that he was eligible for late registration; 2) that he had satisfied the residence and physical presence requirements for TPS; and, 3) that he had not been convicted of a felony or two misdemeanors.

On appeal, the applicant lists twelve criminal offenses and emphasizes that he has not been convicted since 1995.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period. That application was denied on May 6, 2000, because the applicant had been convicted of at least one felony or two misdemeanors. The applicant was granted 30 days to file an appeal; however, he did not contest the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on July 11, 2002. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on April 5, 1999. That initial application was denied by the director on May 6, 2000. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed the current Form I-821 on July 11, 2002. Since the initial application was denied on May 6, 2000, this subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late initial registration.

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 of a 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 Temporary Protected Status 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.

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 application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 11, 2002.¹

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).

On December 23, 2002, 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 qualifying continuous residence and continuous physical presence in the United States. Finally, the applicant was requested to submit court dispositions for all criminal charges that had been filed against him. The record does not contain a response from the applicant.

The director determined that the applicant had failed to establish he was eligible for TPS and denied the application on February 19, 2003.

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

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 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 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 decision to deny the application for TPS due to late registration will be affirmed.

The next issues in this proceeding are 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 did not respond to the director's December 23, 2002, request to submit evidence establishing his qualifying residence and physical presence in the United States. In conjunction with an earlier application for TPS, the applicant submitted the following documentation relating to his residence and physical presence in the United States:

¹ It is noted that the applicant attempted to file the current application on June 17, 2002; however, the application was returned to him for inclusion of the necessary filing fee. The application with proper fee was received on July 11, 2002.

- a) documents regarding his court cases in 1993, 1994, and 1995 and the subsequent probation terms through 1997;
- b) copies of various receipts and pay-stubs from 1992 through 1998;
- c) a letter dated February 8, 1999, from [REDACTED] personnel coordinator for the "Tandem" company, who stated that the applicant had worked for the company since September 25, 1992;
- d) a letter from [REDACTED] who stated that the applicant worked for Janis Plastics, Inc., in Antioch, Illinois, from July 19, 1996 through September 29, 1997;
- e) an installment payment plan credit agreement from College of Lake County dated January 21, 1999, reflecting an Illinois address for the applicant; and,
- f) a letter dated February 24, 1999, from [REDACTED] from Alcoholics Anonymous Grupo San Jose in Waukegan, Illinois, who indicated that the applicant had been attending their meetings since September 1995.

The documents identified as "a", "b", and "d" above are dated prior to the requisite dates for residence and physical presence. The documents identified as "c" and "f" above are of limited value since they do not provide essential information such as the applicant's address during the periods attested to. None of the documents submitted by the applicant attest to his qualifying residence or physical presence in the United States after February 24, 1999. 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 TPS on these grounds will also be affirmed.

The final issue in this proceeding is the applicant's ineligibility based on his criminal record of at least one felony or two misdemeanor convictions.

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act.

"Felony" means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

In the decision dated February 19, 2003, the director stated that the applicant was ineligible for TPS because he had failed to provide requested court dispositions for his criminal offenses. However, a review of the complete record of proceedings reveals that the applicant had already provided some of the requested court

dispositions with his prior application for TPS. Specifically, documentation submitted by the applicant reveals the following offenses:

1. On August 19, 1993, the applicant was charged with aggravated assault with a deadly weapon. (Case [REDACTED] On April 4, 1995, the applicant pled guilty to this misdemeanor in the Circuit Court of the Nineteenth Judicial Court, Lake County, and was placed on probation for a period of 18 months.
2. On November 9, 1993, the applicant was charged in Waukegan, Illinois, with driving without required insurance and with driving while under the influence with a blood alcohol level of .10% or greater. (Docket [REDACTED] and [REDACTED] Neither the classifications nor the final dispositions of these offenses is clear from the submitted court documents.
3. On October 4, 1994, the applicant was charged in Waukegan, Illinois, with being under the influence of alcohol or drugs in public. (Docket [REDACTED] Neither the classification nor the final disposition of this offense is clear from the submitted court documents.
4. On October 6, 1994, the applicant was charged with unlawful use of weapons. (Case [REDACTED] On April 4, 1995, the applicant pled guilty to this misdemeanor in the Circuit Court of the Nineteenth Judicial Court, Lake County, and was placed on probation for a period of 18 months.
5. On June 10, 1995, the applicant was charged in Waukegan, Illinois, with being under the influence of alcohol or drugs in public. (Docket [REDACTED] Neither the classification nor the final disposition of this offense is clear from the submitted court documents.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, as detailed in Nos. 1 and 4 above. 8 C.F.R. § 244.4(a). Consequently, the application also cannot be approved for this reason.

It also is noted that the applicant was deported from the United States on July 26, 2003, at Houston, Texas, based upon his apprehension at Nogales, Arizona, on September 20, 1992. This would also prohibit a finding of continuous physical presence and continuous residence.

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.