



U.S. Citizenship
and Immigration
Services

MM

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 17 2007

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 for
Robert P. Wiemann, Director
Administrative Appeals Office

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invasion of personal privacy

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 that he was eligible for late registration. The director also found that the applicant had failed to establish his date of entry and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits additional evidence, and states he is providing more proof of his presence in the United States.

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 on February 12, 1999, during the initial registration period. That application was denied on February 10, 2000, for failure to establish qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant timely filed an appeal to the AAO. On September 5, 2000, the Director, AAO, dismissed the appeal and affirmed the service center director's decision. The applicant did not file a motion to reopen or reconsider the AAO decision.

The applicant filed this Form I-821, Application for Temporary Protected Status, on June 25, 2003. The director denied this second application, in part, 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. The director's decision discussed the procedural history of the prior case, and noted that this case is considered as an application for late registration because it was received after the initial registration period. Since the applicant did properly file an application during the initial registration period, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on February 12, 1999. That initial application was denied by the director on February 10, 2000, and the appeal was dismissed by the AAO on September 5, 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 a subsequent Form I-821 on June 25, 2003. Since the initial application was denied on February 10, 2000, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late 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 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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed this application with Citizenship and Immigration Services (CIS), on June 25, 2003.

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 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).

On July 28, 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 nationality, date of entry into the United States, and his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his nationality and his residence and physical presence in the United States.

The director determined, in part, that the applicant had failed to establish he was eligible for late registration and denied the application on September 16, 2003.

On appeal, the applicant states he is submitting more proof of his presence in the United States. The applicant also submits auto policy declarations from December 1999 through November 2003, and resubmits a photocopy of his Kansas Driver's License issued October 26, 1999.

The applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. Because the applicant's initial application submitted during the initial registration period was denied by the director on February 10, 2000, this subsequent Form I-821 application, submitted after a decision had been rendered, is considered as an application for late registration for TPS benefits. The record reflects that 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 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 July 28, 2003, to submit evidence establishing his nationality, date of entry into the United States, and his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. A photocopy of his Kansas Driver's License issued October 26, 1999;
2. A photocopy, Republic of Honduras passport issued in Honduras in September 1992, of the biographic pages and pages 7-10, indicating travel into and out of Honduras;
3. A photocopy of a birth certificate with English translation;
4. A photo identification card, issued by Excel Corporation, Dodge City, Kansas, under the name [REDACTED] with social security number; and,
5. A sworn affidavit dated August 21, 2003, from the Human Resources Department of Excel Corporation, Dodge City, Kansas, indicating that Luis Ramos was employed from July 13, 1998 to the date of the letter.

The director determined that the birth certificate, passport, and Kansas Driver's License were sufficient to prove the applicant's identity and nationality.

The director further concluded that the applicant had failed to establish his date of entry into the United States, and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application. The director's decision noted that the employment photo identification was not acceptable as evidence to prove identity under two different names because it was not issued by a civil authority, and that the employment affidavit under a different name was not acceptable evidence as it cannot be associated with the applicant.

On appeal, the applicant resubmits a photocopy of his Kansas Driver's License, and submits the following additional documentation:

1. Auto Policy Declarations, [REDACTED], Dodge City, Kansas, for consecutive periods from December 26, 1999 through May 11, 2002; and,
2. An Insurance Identification Card, Progressive Insurance Company, Burr-Butler Insurance, unspecified location, for the period of May 9, 2003 through November 9, 2003.

It is noted that the applicant's passport indicates travel between Honduras, Belize and Guatemala, in 1993, and corresponding stamps indicate reentry to Honduras. The passport also reflects an exit stamp from Honduras on August 26, 1998, with no corresponding re-entry stamp. While not conclusive, this would undermine the previously affirmed date of entry indicated on the Form I-821, as March 10, 1998, as well as the applicant's earlier use of the employment letter indicating he worked for Excel Corporation, Dodge City, Kansas, since July 1998 under the name Luis Ramos.

The applicant did not submit an auto insurance statement for the one-year period of May 11, 2002 through May 9, 2003. The applicant, furthermore, did not submit any other type of credible evidence in his own name covering the year 2002. The evidence bearing the earliest date indicating residence in the United States, is the applicant's Kansas Driver's License issued on October 26, 1999. It also is noted that the applicant's initial application in 1999 included a home-videotape, on which the camera electronically registered the dates December 24 and 25, 1998. While the applicant is identifiable in the tape, there is no definitive evidence concerning where the video was taken and whether the location is in the United States.

The applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States prior to October 26, 1999, and for the year 2002. 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.