

identifying information to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

~~PUBLIC COPY~~

MA



FILE: [REDACTED]
[SRC 02 195 55121]

Office: TEXAS SERVICE CENTER Date: AUG 01 2005

IN RE: Applicant:



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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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.

On appeal, the applicant submits a statement and resubmits documentation that had previously been entered into the record.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2006, 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 his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 7, 2002.

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 record confirms that the applicant filed his initial TPS 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 fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

On December 10, 2002, the applicant was requested to submit evidence establishing 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, in response, provided photocopies of the following documentation:

1. His Honduran passport issued by the Consulate General, Chicago, Illinois, on March 10, 2000;
2. His Honduran national identity card issued on September 11, 1997;
3. His Honduran Automobile License issued on February 22, 2000;
4. His State of Indiana identification card issued on July 28, 2000;
5. A State of Florida Identification Card for [REDACTED] issued on June 2, 1999, and the Employment Authorization documents (EAD) for [REDACTED] under Category C19, with validity from November 4, 2000 through July 5, 2001, and from November 10, 2001 through July 5, 2002;
6. Partial Florida Power & Light Company billing statements dated in April, June, July and September 1999; and,
7. Partial Bell South billing statements dated in June, July, August, and September 1999.

The applicant, however, did not submit any evidence relating to his eligibility for late initial registration. Therefore, the director determined that the applicant had failed to establish he was eligible for late registration and denied the application on December 5, 2003.

On appeal, the applicant states that he would like to be given "the opportunity to be legal in this country in which with a lot of difficulty [he has] lived here without having a better opportunity in employment and also to pay [his] taxes [sic]." He states that he did not send his application earlier due to lack of knowledge and fear of being deported. In support of the appeal, the applicant resubmits evidence that had previously been entered into the record.

The applicant previously submitted evidence in an attempt to establish his qualifying continuous residence and continuous 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. Although the applicant certified under penalty of perjury that he had not been under immigration proceedings, the record reflects that the applicant was placed in removal proceedings following his apprehension by the United States Border Patrol on May 29, 1999, as he entered the United States without inspection at or near Los Indios, Texas. On September 3, 1999, the Immigration Judge granted the applicant a change of venue to Miami, Florida. On January 28, 2000, in a master calendar hearing, the applicant admitted the factual allegations and stated that he was seeking asylum. The applicant was initially granted until April 7, 2000, to file his asylum application, and then was given an extension until May 8, 2000. The Immigration Judge, Miami, Florida, on May 8, 2000, ordered the applicant removed to Honduras when he failed to appear for his hearing. Further, on January 9, 2002, the Immigration Judge, Miami, Florida, denied the applicant's request for a stay of deportation and motion to reopen. The applicant, however, failed to establish his eligibility for

late registration as described in 8 C.F.R. § 244.2(g), because he failed to file his application for TPS within 60 days immediately following the expiration or termination of the qualifying condition. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant also has not established his continuous residence and continuous physical presence in the United States during the requisite periods. The applicant indicated on his Form I-821, and the record of proceedings confirms, that the applicant entered the United States on or about May 29, 1999. The applicant has failed to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. It is also noted that many of the submitted documents appear to have been altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Consequently, the applicant failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

It is noted that the Federal Bureau of Investigation (FBI) fingerprint results report also indicates that the applicant was arrested on October 26, 2002, by the Plymouth, Indiana, Police Department, and charged with "DOMESTIC BATTERY." No final court disposition and arrest record is included in the record. The charge(s) against the applicant must be addressed in any future proceedings.

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.