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U.S. Citizenship  
and Immigration  
Services



MI

FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 02 2005**

[EAC 03 194 51655]

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, Director  
Administrative Appeals Office

**DISCUSSION:** The initial application for Temporary Protected Status (TPS) was denied on May 30, 2002, by the Director, Vermont Service Center. The applicant re-filed for TPS on June 9, 2002. On September 16, 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 stated to be 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.

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

The record reveals that the applicant filed an initial application for TPS on March 6, 2002, which was outside of the initial registration period. The director denied that application on May 30, 2002, because the applicant failed to establish his eligibility for late registration. The director also found that the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. The director advised the applicant that he had "the right to appeal this decision denying Temporary Protected Status" within 30 days after the notice of his decision. It is noted that the applicant did not file an appeal.

On June 9, 2003, the applicant filed a subsequent Form I-821, Application for Temporary Protected Status. The director denied this second application on September 16, 2003, because it was also filed outside of the initial registration period, and the applicant had failed to establish his eligibility for filing under the provisions of 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.

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 in the United States 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.

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed this TPS application with Citizenship and Immigration Services (CIS), on June 9, 2003.

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 proceeding confirms that the applicant filed his application for TPS on June 9, 2003, 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).

In a notice of intent to deny, dated July 11, 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 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. The applicant was further requested to submit evidence to show that he is a citizen or national of Honduras. The applicant failed to respond to the notice of intent to deny.

The director determined that the applicant failed to establish his eligibility for late registration. It is noted that the director's decision merely states that the applicant failed to establish his eligibility for late registration. The director's decision did not cite the additional grounds in the notice of intent to deny, which were the applicant's failure to establish his continuous residence and his continuous physical presence in the United States during the

requisite timeframes, and evidence to demonstrate that he is a citizen or national of Honduras. These issues will be addressed beyond the decision of the director.

On appeal, the applicant states that he had applied for TPS in a timely manner and submitted all of the appropriate documentation to prove that he has established residence in that United States during the initial registration period. The applicant also states that he has no way of proving that he meets one of the four categories to qualify for late registration. The applicant submits: two affidavits from persons claiming to have known him for approximately five years; a medical appointment slip for May 20, 1997; a letter, dated September 26, 2003, from the pastor of Saint Peter R.C. Church in Pleasantville, New Jersey, who states that the applicant is presently a member of the church, and that he has resided in Atlantic City, New Jersey since February 13, 1997; and, a AR-11, Change of Address Card.

The applicant has provided no documentary evidence on appeal to establish his eligibility for late registration. Therefore, the applicant does not qualify for late registration as described in 8 C.F.R. § 244.2(f)(2). The director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has provided insufficient credible evidence to establish that he has been continuously residing and has been continuously physically present in the United States during the required timeframes. The affidavits presented on appeal, without supporting documentary evidence, are not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the medical appointment slip is dated prior to the requisite timeframes, and the pastor's letter, dated September 26, 2003, merely states that the applicant is presently a member of the church. Also, the pastor's letter does not explain how it is known that the applicant "has resided in Atlantic City since Feb. 13, 1997." Further, although the record contains a copy of what appears to be the applicant's birth certificate, along with an English translation, the record contains no documentation, such as a National Identification Card, to establish the applicant's identity. Consequently, 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.