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U.S. Citizenship
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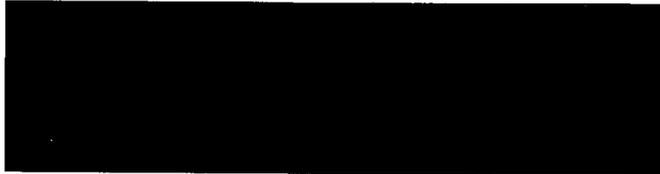
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Office: VERMONT SERVICE CENTER

Date: AUG 02 2005

IN RE:

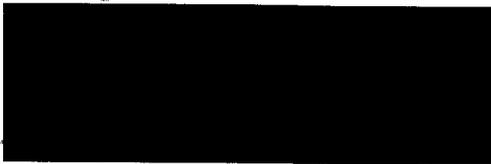
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 application was denied by the Director, Vermont 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 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 that he was eligible for late registration.

On appeal, counsel provides a brief statement.

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 has established his eligibility to file 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 his initial application with Citizenship and Immigration Services (CIS), on July 1, 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 own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed his application for TPS on July 1, 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 August 22, 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 and his continuous physical presence in the United States during the requisite timeframes. The applicant was further requested to submit evidence to show that he is a citizen or national of Honduras.

The director found that the applicant, in his response to the notice of intent to deny, submitted documents to address residence and nationality. However, the director found that the applicant failed to provide evidence to establish his eligibility for late registration. Consequently, the director denied the application on October 15, 2003. It is noted that the director's decision did not cite the additional ground in the notice of intent to deny, which was the applicant's failure to establish his continuous physical presence in the United States during the requisite timeframe. It is also noted that although the director indicates that the applicant provided the requested documentation for continuous residence, the director did not determine if these documents were sufficient in establishing that the applicant had been continuously residing in the United States since December 30, 1998. These issues will be addressed beyond the decision of the director.

On appeal, counsel states:

On October 15, 2003 your office sent a letter denying [REDACTED] case for TPS based on the fact that he was unable to prove that he initially registered during the period of January 5, 1999 and August 20, 1999. [REDACTED] proved [sic] a copy of the initial forms that he filed with the service [sic]. [REDACTED] was unable to obtain the receipt notices for this initial registration.

The record contains a letter from the applicant, dated May 26, 2003, which states, in pertinent part:

My name is [REDACTED] I currently reside at [REDACTED] 10474. 2002 I sent you my application for TPS. My receipt EAC-002-815-1256 [REDACTED] [REDACTED] I also sent a money order of \$120.00; \$50.00, \$50.00 for the Employment Authorization Card. Since then I did not receive my EAC. Since then I have received an Approved letter but I did not received my EAC, Now I am submitted my second application for my EAC.

The record also contains Form I-797, Notice of Action, dated January 22, 2001, addressed to the applicant, which states:

Your petition(s)/application(s) and supporting documents are attached. When you have complied with the instructions marked on this form, resubmit your petition(s)/application(s) with this letter and all supporting documents to the address below.

Your remittance is being returned to you as not needed at this time. When you receive your Receipt Notice (I-797), please refer to the balance due section for any further fee submission.

The record further contains Form I-797, Notice of Action, dated June 23, 2003, addressed to the applicant, which states:

The above application/petition ("TPSMITCH") and supporting documents are attached. Your application for TPS has been rejected for the following reason(s). Your application has not been examined for legal sufficiency and/or required documentation. Please read carefully. You must add the missing item(s) to your application and your re-submission.

In order to register for Temporary Protected Status, you must submit the following:

Form I-821, Application for Temporary Protected Status. A \$50.00 fee is required for initial and late initial filings.

Fingerprint processing fee of \$50.00 is required if applicant is 14 years of age or older or has turned 14 since their last submission.

Form I-765, Application for Employment Authorization. A \$120.00 fee for the form I-765, if you are seeking employment authorization, and are between the ages of 14 and 65.

Please note that you must submit both forms, but you need not submit the \$120.00 fee if you do not wish to seek employment authorization. Please clearly state on your resubmission if you are not seeking employment authorization.

Please resubmit your application to the address below. Include this notice with your application package.

In response to counsel's statement on appeal that the applicant "was unable to obtain the receipt notices for this initial registration," the applicant was never issued a receipt notice, as his application(s) were not accepted and had been returned for further compliance with instructions noted on both Form I-797's mentioned above. It is apparent that the applicant did not file his initial TPS application until July 1, 2003, nine days after the notice date (June 23, 2003) on the above-mentioned Form I-797, and more than two years after the qualifying registration period.

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 not submitted sufficient evidence to demonstrate 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 record merely contains a letter dated September 8, 2003, from [REDACTED] who states that the applicant has resided at her house from "jan/5/98 until the year 2002." The letter does not demonstrate the applicant's day-to-day living in the United States from the onset of the requisite timeframes to the filing date of his application. The letter, without sufficient credible documentary evidence such as medical records, earnings statements, utility bills, and rent receipts, is not sufficient for meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant has not met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2 (b) and (c). 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.