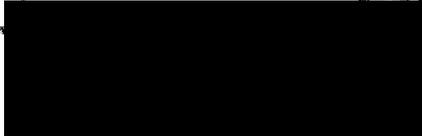


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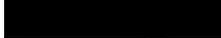


U.S. Citizenship
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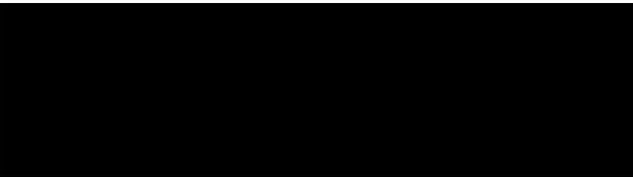
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FILE: 
[SRC 99 206 53339]

Office: TEXAS SERVICE CENTER Date: **AUG 17 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, 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. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant provides a statement and additional evidence in support of his claim.

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 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 the director's finding that the applicant failed to establish that he was eligible for late registration.

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 21, 1999. The director's decision noted that the applicant had filed his initial application on June 21, 1999. The statements that the applicant failed to apply during the initial registration period were clearly made in error. Therefore, this portion of the director's decision is withdrawn.

The second and third 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.

The initial TPS application included a copy of the applicant's birth certificate with English translation, and a letter from the applicant dated June 17, 1999, thanking the INS for the opportunity to apply for TPS.

On March 15, 2002, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant was also requested to submit photo identification, or a national identity document from his country of origin bearing a photograph and/or fingerprint. In response, the applicant submitted the following documentation:

1. A Notice of Hearing in Removal Proceedings, dated May 20, 1999, indicating that the applicant was scheduled for a master calendar hearing before the immigration court on November 8, 1999;
2. A photocopy of the applicant's Employment Authorization documents (EADs), in the name of [REDACTED] for the periods of August 11, 2000 through July 5, 2001, and October 26, 2002 through July 5, 2003;
3. A photocopy of the applicant's State of Florida Identification Card issued on October 7, 1999, in the name [REDACTED]; and,
4. A photocopy of the applicant's Social Security Card in the name [REDACTED]

The director concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on August 22, 2003. The director noted that the applicant had stated on his Form I-821, Application for Temporary Protected Status, that he entered the United States on April 5, 1999, and that documentation submitted in support of his application did not indicate his presence in the United States prior to the April 5, 1999 date of entry.

On appeal, the applicant states that "[d]ue to personal reasons" he had a master calendar hearing scheduled in Harlingen, Texas, on November 8, 1999, which was transferred to Miami, Florida, where his relatives live. The applicant states that the Immigration Judge heard his case and granted him a work authorization card on January 4, 2000. The applicant states that he is submitting documents to prove his presence since January 5, 1999. In support of the appeal, the applicant submitted the following documentation:

1. A copy of the first page of the Form I-821 and fee receipt filed on June 21, 1999;
2. A copy of the receipt notice for the TPS application filed on June 21, 1999;
3. A copy of the Order of the Immigration Judge dated January 4, 2000, ordering that the applicant's case be administratively closed and considered no longer pending before the Immigration Judge because the applicant was a TPS applicant;
4. A copy of the Notice to Appear, dated May 1, 1999, placing the applicant in removal proceedings;

5. A copy of the applicant's Sworn Affidavit, received at the Executive Office for Immigration Review (EOIR), Immigration Court, Miami, Florida, on January 18, 2000, in which the applicant asserts that he first entered the United States on December 20, 1998, then left the United States and returned on April 5, 1999;
6. A photocopy of a 1999 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, indicating [REDACTED], received wages of \$640 for the year 1999, and a related ADP, 1999 W-2 and Earnings Summary indicating the marital status and social security number of [REDACTED];
7. A photocopy of a pay summary for [REDACTED] dated June 14, 2000;
8. An IRS Account Summary for [REDACTED] dated July 5, 1999, indicating a balance due for the tax year 1998;
9. Partial copies of IRS Form 1040, U.S. Individual Income Tax Return, for 1999, 2000, 2001, 2002; and,
10. Photocopies of the applicant's successive EAD cards dating from September 25, 1999 through July 5, 2003.

The partial photocopies of the IRS Forms 1040 include only the name, social security number, and incomplete addresses. The forms bear no evidence of having been completed or filed. Moreover, the social security number on these forms is the same as that provided on the photocopy of the applicant's social security card, but differ from the social security number listed on items 6, 7, and 8 above. In addition, the IRS Form 1040 for 1999 lists the applicant's address as his current address, while the 1999 IRS Form W-2 and the Earnings Summary for 1999 provide a different address for the same time period. The 1999 Earnings Summary indicates the applicant is married, while he indicated on his Form I-821 of the same year that he was single. The pay summary in Item 7 above, indicates the applicant as single.

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). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies noted above. The applicant's apprehension by the United States Border Patrol on April 5, 1999, further precludes a finding of eligibility. It must be concluded that the applicant has failed to submit sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. 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 these grounds will be affirmed.

It is noted that the EAD in the name of [REDACTED] for the period of October 26, 2002 through July 5, 2003, was incorrectly delineated as Category 274a.(A)(12), instead of (C)(19).

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.