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MI

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: DEC 13 2005

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

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 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 determined that the applicant failed to submit evidence to establish that he was eligible for filing after the initial registration period from January 15, 1999 to August 20, 1999. The director also determined that the applicant had failed to submit sufficient evidence to establish that he had continuously resided in the United States since December 30, 1998, and that he had been physically present in the United States since January 5, 1999. The director, therefore, denied the application.

On appeal, the applicant reiterates his claim of residence in the United States since 1997. The applicant submits 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 as 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 CIS director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The term *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 term *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.

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.

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.

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 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 Citizenship and Immigration Services (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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his TPS application on June 4, 2002, after the initial registration period for Hondurans 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/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 June 27, 2002, the applicant was provided the opportunity 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 physical presence in the United States from January 5, 1999. While the applicant, in response, provided documentation relating to his residence in the United States, he failed to submit evidence to establish his eligibility for late registration.

The director concluded the applicant had not established eligibility for late registration. On November 26, 2002, the director denied the application.

On appeal, the applicant states that he was experiencing financial difficulties at the time of the initial registration period, that he had lost his job, and that he did not have the funds to apply for TPS. The applicant submitted evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite periods. 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. 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 physical presence in the United States since January 5, 1999.

The applicant submitted the following documentation with his application for TPS:

- 1.) nine pay statements from [REDACTED] Miami, Florida, reflecting salary paid to the applicant, for the pay periods from January 30, 1998 through April 16, 1998;
- 2.) an earnings statement, processed by [REDACTED] reflecting salary paid to the applicant, under Social Security number [REDACTED] by [REDACTED], Miami, Florida, for the pay period ending October 20, 1998;
- 3.) check No. [REDACTED], issued to the applicant by [REDACTED], Davie, Florida, on December 12, 1998; and,
- 4.) a Western Union receipt for funds transferred by the applicant on November 20, 1997.

As stated above, on June 27, 2002, the applicant was provided the opportunity to submit evidence establishing his continuous residence in the United States since December 30, 1998, and his physical presence in the United States from January 5, 1999. In response, the applicant submitted the following documentation:

- 5.) four pay statements from [REDACTED] reflecting salary paid to the applicant, for the pay periods from January 16, 1999 through April 30, 1999;
- 6.) utility bills, dated June 25, 1999 and July 24, 1999, from [REDACTED] Miami, Florida; and,
- 7.) a June 10, 1999 telephone bill from BellSouth.

The director noted that CIS records indicate the applicant entered the United States on July 15, 2000, as records indicate that the applicant was apprehended on July 15, 2000, by the U.S. Border Patrol. The director, therefore, concluded the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States. On November 26, 2002, the director denied the application.

On appeal, the applicant reiterates his claim of residence in the United States since 1997. The applicant submits additional copies of the same evidence described in items Nos. 5, 6, and 7, above, which he had previously furnished in response to the June 27, 2002, notice of intent to deny his application.

The applicant has submitted four pay statements for the pay periods from January 30, 1998 through April 16, 1998; one pay statement for the pay period ending October 20, 1998; one pay statement for the pay period ending December 12, 1998; and pay statements and utility bills for the period from January 16, 1999 through July 24, 1999. The record also contains a Form I-246, Application for Stay of Deportation, dated July 15, 2000, and signed by the applicant on May 14, 2001. This application, however, was never properly filed with CIS. The applicant stated on the application form that he was arrested on July 15, 2000, as he attempted to enter the United States, after attending the funeral of his grandmother, who died in April 2000. The applicant did not state when he left the United States. However, it is noted that no such statement was made at the time that the applicant was apprehended. Rather, he stated that he was traveling to the United States to meet with brothers in Florida, but could not provide the officers with an address. The applicant has not submitted sufficient evidence to establish that he has continuously resided in the United States since December 30, 1998, and that he has been physically present since January 9, 1999. The applicant has 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.

It is noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued on November 2, 2000, in Dallas, Texas.

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.