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U.S. Citizenship  
and Immigration  
Services

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FILE:



[EAC 03 192 52321]

Office: VERMONT SERVICE CENTER

Date: FEB 15 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, 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. The director also found that the applicant had failed to establish his qualifying continuous physical presence in the United States.

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

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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on June 9, 2003.

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).

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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).

On July 3, 2003, the director requested the applicant to submit evidence establishing his eligibility for late registration. The applicant was also requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

A review of the record reveals that the applicant submitted the following documentation in support of his initial application, and in response to the director's request for additional evidence:

1. A photocopy of his Honduran birth certificate, with English translation;
2. A photocopy of a document indicating that he was sentenced to three years probation on October 5, 1998, for Possession of Weapons for Unlawful Purposes;
3. Photocopies of his 1999 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, indicating an income of \$16,005.01 from [REDACTED], Edison, New Jersey;
4. A photocopy of an earnings statement from [REDACTED], Dayton, New Jersey, for the pay period ending on May 28, 1997; and,
5. A photocopy of an earnings statement from [REDACTED], Edison, New Jersey, for the pay period ending on February 5, 1997.

The director determined that the applicant had failed to establish his eligibility for late registration, and his qualifying continuous physical presence in the United States during the requisite time period. The director denied the application on September 9, 2003.

On appeal, the applicant submits the following additional documentation:

6. Photocopies of earnings statements from [REDACTED], Dayton, New Jersey, for the pay periods ending on August 18, 1999; September 22, 1999; October 6, 1999; and, December 22, 1999.

The record confirms that the applicant filed his Form I-821 after the initial registration period had expired. The applicant has 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 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).

Based on the documentation submitted, it appears that the applicant was physically present in the United States from February 1997 through May 1997 (Nos. 4 and 5, above); and from October 1998 through December 1999 (Nos. 2, 3, and 6). However, there is no corroborative evidence to establish that the applicant was physically present in the United States for the period from January 5, 1999 through to the date of filing his initial TPS.

application. It is reasonable to expect that the applicant would have a variety of contemporaneous evidence to support his assertion of having been continuously physically present in the United States throughout the requisite qualifying time period; however, insufficient corroborative evidence has been provided.

Based on a review of the record, as discussed above, it is concluded that the applicant has failed to overcome the director's concerns. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that, beyond the decision of the director, the applicant has also failed to submit sufficient evidence to establish his continuous residence in the United States since December 30, 1998.

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.