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U.S. Citizenship
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Services



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JAN 21 2005

FILE: [REDACTED]
[LIN 03 233 50659]

Office: NEBRASKA SERVICE CENTER

Date:

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.

Cinder M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 establish he: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant requests that the evidence he is providing be examined.

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 Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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.

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.

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 period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed his initial TPS application on July 30, 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 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 application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. *See* 8 C.F.R. § 244.2(g).

On August 23, 2003, 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 establishing his nationality and identity, his date of entry and continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant, in response, provided evidence of his nationality and identity, and evidence in an attempt to establish his residence and physical presence in the United States. The applicant also presented copies of Employment Authorization documents that he had received due to an asylum application that he had pending. Those documents included an Employment Authorization card issued on January 3, 1997 at the Vermont Service Center under category 8 C.F.R. § 274.A12(c)(8); and another Employment Authorization card

issued on February 12, 1998 at Nebraska Service Center under that same category. Additional Employment Authorization cards also were issued on March 10, 1999, one at the Saint Paul, Minnesota office and the other from an unidentified location, and a (C-8), Employment Authorization card issued on March 10, 2000 at the Nebraska Service Center (also issued as an asylum applicant). The applicant, however, did not submit sufficient evidence to establish eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant requests that the evidence he has submitted be examined. While the applicant's pending asylum application technically rendered him eligible for late registration, regulations at 8 C.F.R. § 244.2(g) also require a TPS late registration to be filed within a 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2). The applicant's last Employment Authorization under his asylum application expired on March 9, 2001. Therefore, the applicant's 60-day period for TPS late initial registration expired on May 9, 2001. The applicant filed his TPS application on July 2, 2003, almost two years after the end of the allotted 60-day period for late registration. The applicant has failed to establish that he met the requirements for late registration described in 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the application for temporary protected status 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 continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on August 23, 2003 to submit evidence establishing his qualifying residence and physical presence in the United States. In response, the applicant submitted the following documentation:

1. A copy of a birth certificate issued August 24, 1999 showing the applicant's son was born on June 17, 1999.
2. A copy of the applicant's birth certificate with an English translation.
3. A copy of the applicant's 1996 Form 1040, U.S. Individual Income Tax Return and a copy of the applicant's 1997 Form M-1, Minnesota Individual Income Tax Return.
4. Copies of the applicant's employment identification cards (as listed above), his State of Minnesota Driver's License issued on August 13, 1998, and his Social Security card.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant furnished:

1. A letter from GMAC dated January 15, 1999 and vehicle purchase contracts dated December 14, 1999, and March 22, 1999.
2. Copies of a 1999 Form 1040, Individual Tax Return and 1998 state tax forms.
3. Copies of an undated Massachusetts Identification Card and a Minnesota Driver's

License with an expiration date of June 13, 2007.

The applicant also resubmits evidence previously provided.

The evidence the applicant provided on appeal, when examined in conjunction with the evidence previously provided by the applicant, and the applicant's employment identification cards and driver's license, establish that the applicant continuously resided in the United States since December 30, 1998 and maintained continuous physical presence in the United States from January 5, 1999 to the filing date of the application. Therefore, the applicant has submitted sufficient evidence 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 be withdrawn.

Beyond the director's decision, it is noted that a Form I-130, Petition for Alien Relative, filed on the applicant's behalf was denied on December 4, 1998, because the applicant was determined to be statutorily ineligible.

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.