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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042,
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 01 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 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 his continuous residence and his continuous physical presence in the United States during the required timeframes.

On appeal, the applicant provides a brief statement, copies of documentation previously submitted, and a copy of what appears to be a card for [REDACTED] Attorney at Law.

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 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 7, 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).

In a notice of intent to deny, dated August 6, 2003, the applicant was requested to submit evidence of his eligibility for late registration. The applicant was also requested to submit evidence to show that he has been continuously residing in the United States since December 30, 1998, and that he has been continuously physically present in the United States since January 5, 1999. It is noted that the record indicates that the applicant did not enter the United States until November of 1999.

The director found that the applicant, in response to the notice of intent to deny, "submitted evidence of your eligibility under the late initial filing provisions." However, the director found that the applicant failed to submit evidence to demonstrate his continuous residence and his continuous physical presence in the United States during the requisite timeframes. The director denied the application on January 27, 2004.

On appeal, the applicant states that he filed an application for TPS on July 7, 2003, but never received his work permit or his fingerprint notice. The applicant also states that he was apprehended by Immigration when he entered the United States "on November 1999," but was never deported. The applicant further states that he never filed for TPS because he "was under the Immigration process for removal but they allowed me in the country because all my family are here, my both [sic] parents and brothers and sister." In addition, the applicant states that his lawyer has his case and does not want to give him any information. It is noted that the record contains no Form 28, Notice of Appearance by an Attorney or Representative.

The applicant cannot establish that he has been continuously residing in the United States since December 30, 1998, and that he has been continuously physically present in the United States since January 5, 1999, as the applicant did not enter the United States until November of 1999, almost eleven months after the onset of the requisite timeframes. Consequently the applicant has not established that he has been continuously residing and has been continuously physically present in the United States during the requisite timeframes. The director's decision to deny the application for temporary protected status on these grounds will be affirmed.

Beyond the decision of the director, the director erred in stating that the applicant submitted sufficient evidence (his parents approval for TPS) of his eligibility for late registration. While regulations may allow the child of an alien currently eligible to be a TPS registrant to file an application after the initial registration period had closed, these regulations do not relax the other requirements for eligibility for TPS. The applicant's TPS application indicates that he did not enter the United States until November of 1999, more than two months after the initial registration period. The applicant is not eligible for late registration under 8 C.F.R. § 244.2(f)(2), as he arrived in the United States subsequent to the eligibility period. Therefore, the application must also be denied for these reasons.

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.