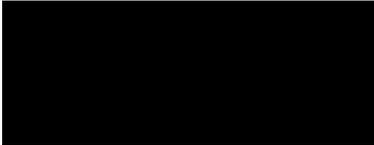


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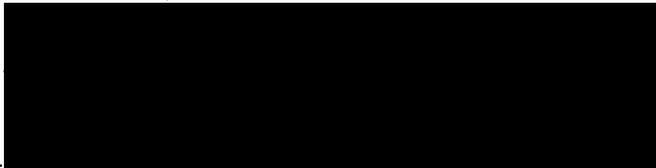
Office: TEXAS SERVICE CENTER

Date: JUL 05 2005

[SRC 02 208 56913]

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.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, due to abandonment on October 9, 2002. On October 23, 2002, the applicant filed a timely motion to reopen, which was granted by the service center director on December 20, 2002, in order to permit the applicant to submit all of the requested evidence. The applicant responded to the reopening of his TPS application by submitting additional evidence under the cover of another Form I-290B, Notice of Appeal, dated January 6, 2003.

On January 17, 2003, the service center director then dismissed the applicant's January 2003 response as a Motion to Reopen and Reconsider, incorrectly indicating the date of the October 2002 Motion to Reopen, but listing the evidence that was included with the January 2003 response. The applicant subsequently filed a timely appeal on February 3, 2003, to the service center director's decision of January 17, 2003.

While the appeal was pending, the service center director, on April 22, 2003, issued another Denial of Service Motion to Reopen and Reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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, Texas Service Center, initially denied the application due to abandonment because the applicant failed to respond to a request for additional evidence. After reopening the case on December 20, 2002, the director subsequently denied the TPS application because the applicant failed to establish he was eligible for late registration. Due to the circumstances of the case, all of the evidence will be addressed in this decision, and the appeal will be considered.

On appeal, the applicant submits a statement and resubmits evidence that had been previously entered into the record.

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 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 24, 2002.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period 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 late initial registration. 8 C.F.R. § 244.2(g).

On August 1, 2002, the applicant was requested 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 continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. In addition, the applicant was requested to submit evidence of his nationality, including a birth certificate, with English translation. The record does not contain a response from the applicant; therefore, the director denied the application due to abandonment on October 9, 2002.

On motion to reopen dated October 23, 2002, the applicant requested that his case be reopened. In support of the motion, the applicant submitted photocopies of the following documentation: his State of Florida Identification Card issued on December 9, 1998, with a duplicate issued on July 5, 2001; an undated Florida Power & Light Company letter indicating that the applicant had service with the company since May 11, 1998; and, customer inquiry printouts dated October 17, 2002, and stamped Wachovia Bank, National Association.

The director reopened the proceedings on December 20, 2002, and notified the applicant that his TPS application could not be approved unless he submitted additional evidence within 30 days to establish he was eligible for late initial registration.

The applicant responded to this decision by submitting additional evidence on January 6, 2003. In his statement, the applicant indicates both: that he did not have money to apply for TPS “[a]t the time of the first application” and thought he would resolve this case at a later date; and, that “[s]ince the first opportunity of the TPS I applied for it [sic], but due to ignorance and lack of information, money and fear of b[eing] deported I did not continue the process and my TPS application was denied.” The applicant also submitted: a receipt dated “10-6-99;” a dental plan estimate dated “6/[illegible]/99;” a Mercy Hospital receipt dated June 18, 1999; and, earnings statements dated in January and March 1999.

The applicant's response was treated as a new Motion to Reopen and was denied on January 17, 2003, by the director because the applicant failed to establish his eligibility for late initial registration. In another Denial of

Service Motion to Reopen and Reconsider, dated April 22, 2003, the director again reiterated that the applicant had failed to establish his eligibility for late initial registration.

On appeal, the applicant reiterates both of his statements that he did not apply at the time of the first application because he feared deportation and lacked money, and that he did apply for TPS since the first opportunity but due to ignorance, lack of information, lack of money, and fear of being deported, he did not continue the process and his TPS application was denied. In support of the appeal, the applicant resubmits the January 1999 earnings statements and the Mercy Hospital receipt.

The applicant 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, Application for Temporary Protected Status, within the initial registration period. The applicant presented no evidence to substantiate that he had previously applied for TPS during 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 decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. With his initial submission, the applicant included a copy of a Honduran national identity document that indicates it was issued to him in Honduras on October 19, 2001. This undermines a finding that the applicant has continuously resided and been continuously physically present in the United States during the entirety of the requisite periods. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

Beyond the decision of the director, the applicant has also failed to conclusively establish his nationality. The Federal Bureau of Investigation (FBI) fingerprint results report pertaining to the applicant's fingerprints, indicates the applicant's birthplace as El Salvador, and citizenship as Honduras. However, on the Form I-821, the applicant claims his birthplace and citizenship as Honduras. The applicant failed to submit his birth certificate, with English translation, as initially requested by director. Therefore, the application must also be denied for this reason.

It is also noted that the applicant certified under penalty of perjury that he had never been under immigration proceedings. However, the Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant was apprehended by the United States Border Patrol while attempting entry into the United States, at or near McAllen, Texas, on or about October 1, 1992, and placed in deportation proceedings. The FBI report also reflects that the applicant was apprehended by the United States Border Patrol at Pembroke Pines, Florida, on June 12, 1994, and was charged with violation of immigration law under record number A73 214 563.

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.