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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 03 188 51161]

Office: VERMONT SERVICE CENTER

Date: JUN 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.

  
for 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 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 been continuously physically present in the United States since January 5, 1999; and 2) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant asserts that he has proof that he has been in the United States since 1995.

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.

The term *continuously physically present*, as used in 8 C.F.R. § 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by CIS, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. 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 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 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 application on May 31, 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 July 1, 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 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 did not present any evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that he has evidence that he has lived in the United States since 1995. The applicant also provides additional evidence in an attempt to establish his continuous residence and physical

presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application within the initial registration period. The record indicates that the applicant provided evidence that he had a pending Form I-485, Application to Register Permanent Residence or Adjust Status. While a pending Form I-485 application technically rendered the applicant eligible for late registration, CIS regulations also require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions that made the applicant eligible for late registration. 8 C.F.R. § 244.2(g). In this case, the applicant submitted a Form I-485 Withdrawal dated September 13, 2001. The applicant's 60-day period for late registration expired on November 12, 2001. The applicant filed his TPS application on May 31, 2003, almost 2 years after the end of the registration period and his 60-day period for late registration. The applicant has failed to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

The second issue in this proceeding is whether the applicant has established his continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on August 21, 2003 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted evidence that established his continuous residence. However, the applicant failed to establish his continuous physical presence in the United States from January 5, 1999 to the filing of his application on May 31, 2003.

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

On appeal, the applicant furnished sufficient evidence to establish his continuous physical presence in the United States during the qualifying period. Therefore, the applicant has overcome this portion of the denial.

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.