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U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 03 257 55459]

Office: VERMONT SERVICE CENTER

Date: JUN 16 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 denied the application because the applicant failed to establish that he had: (1) continuously resided in the United States since December 30, 1998; (2) been continuously physically present in the United States since January 5, 1999; and (3) was eligible to take advantage of the late registration provision of the Temporary Protected Status regulation.

On appeal, the applicant asserts that because he has no legal documents he is unable to rent an apartment, and therefore, does not have rent or medical receipts as evidence of being present in the United States prior to December 30, 1998. The applicant also asserts that he only has friends and co-workers who can attest to his presence in the United States.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

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.

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. 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 application with Citizenship and Immigration Services (CIS), on September 17, 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 or her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant has established his continuous residence in the United States since December 30, 1998, or his continuous physical presence in the United States since January 5, 1999.

In support of the initial application, the applicant provided the following documentation:

1. An affidavit from [REDACTED] in which he states that he has known the applicant since May 27, 1999, and that they have worked together;

2. An affidavit from [REDACTED] in which he states that he has known the applicant since December 10, 1998, and has worked with the applicant part-time;
3. An affidavit from [REDACTED] in which he states that he has known the applicant since October 10, 1998;
4. An affidavit from [REDACTED] in which he states that he has known the applicant since August 15, 1999, and that he has worked with the applicant part-time; and,
5. A copy of a Honduran passport issued to the applicant in Honduras on October 29, 2002.

On October 20, 2003, the director requested that the applicant submit evidence establishing his continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States. The applicant, in response, provided the following documentation:

6. An affidavit from [REDACTED] in which he states that he has known the applicant since August 9, 1999, and that he is the applicant's co-worker;
7. An affidavit from [REDACTED] in which she states that she has known the applicant since December 31, 1999, and that she has worked with the applicant;
8. An affidavit from [REDACTED] in which she states that she has known the applicant since March 19, 1999; and,
9. An affidavit from [REDACTED] in which he states that he has known the applicant since December 4, 1999, and that he and the applicant used to work together.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 23, 2004. The director stated that affidavits submitted without other acceptable evidence do not meet the evidentiary requirement for TPS.

On appeal, the applicant reasserts his claim of eligibility for TPS.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since December 30, 1998, or continuous physical presence in the United States since January 5, 1999. The affidavits submitted have little evidentiary weight or probative value. Although the affiants stated that they knew the applicant, they provide no detailed information or supporting documentation to substantiate their claim.

The applicant states in his response to the Notice of Intent to Deny and on appeal that he has been unemployed and requests that Citizenship and Immigration Services (CIS) give him an opportunity to receive employment authorization, however, it is noted that five out of the nine affiants claim to be the applicant's co-workers. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant claims to have lived in the United States since July

4, 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these affidavits; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is noted by the AAO that the applicant submitted a colored copy of his Honduran passport issued to him in Honduras on October 29, 2002; thus, eliminating any possibility of his continuous residence or continuous physical presence in the United States during the requisite period.

The applicant has failed 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 TPS will be affirmed.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on September 17, 2003.

The record of proceedings 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, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and that 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).

On October 20, 2003, 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 qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on February 23, 2004.

On appeal, the applicant states that he was afraid of being deported and therefore, did not file the application until after the registration period had closed.

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 because the applicant had failed to establish his eligibility for late registration will be affirmed.

An alien applying for TPS 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.