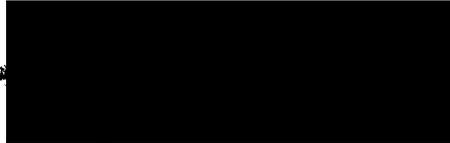


**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



*M*

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 21 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.

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 (AAO) 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 was eligible for late registration. The director also found that the applicant had failed to establish continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant submits a statement and additional evidence.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, 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 July 1, 2003.

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).

The first 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.

The applicant initially submitted the following evidence in an attempt to establish his qualifying continuous residence and physical presence in the United States:

1. an Internal Revenue Service (IRS) letter dated July 25, 2002, acknowledging receipt of his application for a taxpayer identification number;
2. a photocopy of his Honduran passport issued by the Honduran consulate in New York, New York, that was valid from December 8, 1998 to December 8, 2003;
3. his New York driver's license issued on February 12, 1999;
4. a New York birth certificate indicating that [REDACTED] was born to the applicant and [REDACTED] in Newburgh, New York on August 18, 1994;
5. a New York birth certificate indicating that [REDACTED] was born to the applicant and [REDACTED] Newburgh, New York, on September 22, 1996;
6. a copy of the court disposition from the City Court, City of Newburgh, County of Orange, State of New York, relating to the applicant's arrest on February 26, 1992, on the charge of Assault 3rd, PL-120-00-01;
7. a copy of the court disposition from the City Court, City of Newburgh, County of Orange, State of New York, relating to the applicant's arrest on March 15, 1995, on the charge of Assault 3<sup>rd</sup>, PL-120.00-01; and,
8. a copy of the court disposition from the City Court, City of Newburgh, County of Orange, State of New York, relating to the applicant's arrest on December 30, 1995, on the charge of Harassment, PL0246-01.

On July 30, 2003, the applicant was requested to submit evidence establishing his qualifying continuous residence and physical presence in the United States. The notice was mailed to the applicant at his address of record, the same address he listed on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU); the record does not contain a response from the applicant.

The director concluded that the applicant had failed to establish his qualifying continuous residence and physical presence in the United States during the requisite periods and denied the application on December 23, 2003.

On appeal, the applicant provides the following, additional evidence:

9. an affidavit from his aunt, [REDACTED] attesting to his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999;
10. an affidavit from his cousin, [REDACTED] attesting to his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

The applicant has submitted only his New York driver's license issued on February 12, 1999, a letter from the IRS dated July 25, 2002, and two affidavits to establish his qualifying continuous residence and continuous physical presence during the requisite periods. It is concluded that the applicant has not submitted sufficient evidence to establish that he has met the continuous residence and physical presence 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 also be affirmed.

The second issue in this proceeding is whether the applicant has established that he is eligible for late registration.

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 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).

As stated above, on July 30, 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 failed to respond to the notice.

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

On appeal, the applicant claims that he never received the Notice of Intent to Deny dated July 30, 2003. He asserts that he is eligible for late registration because his mother was the beneficiary of an approved visa petition as the spouse of a United States citizen. The applicant has not provided any evidence to corroborate his claim. Furthermore, the applicant cannot qualify for late initial registration as the son of a Honduran citizen who was the beneficiary of an approved immigrant visa petition. In order to qualify for late registration on that basis, the applicant must establish that he had a pending adjustment for change or status or adjustment of status during the initial registration period.

The applicant has not provided any evidence to establish that his mother was an alien currently eligible to be a TPS registrant during the initial registration period. Even if the applicant were to provide such evidence, he would not qualify for late initial registration on this basis. Although CIS regulations allow the child of an alien currently eligible to be a TPS registrant to file an application after the initial registration period, section 101(b)(1) of the Act defines the term "child" as an "unmarried person under twenty-one years of age." Evidence of record

reveals that the applicant (who was born on January 21, 1969) was 30 years old during the initial registration period and, therefore, was not considered a "child" for immigration purposes.

On appeal, the applicant submits an affidavit from his aunt, Irma Santiago, in which she asserts that the applicant also qualifies for late registration because he was a nonimmigrant during the initial registration period, and continues to be a nonimmigrant. This statement directly contradicts the applicant's own statement on the Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection on December 18, 1988. The applicant specifically identifies his current immigration status on the Form I-821 as "undocumented alien." Therefore, the claim that the applicant was a nonimmigrant during the initial registration cannot be accepted. The applicant has not submitted any evidence to establish that he has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

Beyond the decision of the director, it is noted that the applicant is inadmissible to the United States under the provision of 8 C.F.R. § 244.3(c)(1) because has been convicted of two misdemeanors in Newburgh, New York. Specifically, on April 14, 1995, the applicant pled guilty to harassment and on March 3, 1993, the applicant pled guilty to disorderly conduct. Therefore, he is ineligible for TPS pursuant to 8 C.F.R. § 244.4(a), and the application also must be denied for this reason.

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.