

identifying case deleted to  
prevent disclosure of unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

M1

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

MAR 30 2005

[LIN 03 196 53385]

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

PHOTOCOPY

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, Nebraska Service Center, and 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 denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial application [WAC 01 262 51320] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 2, 2001, after the initial registration period had closed. That application was denied on October 23, 2003, because the applicant failed to establish his date of entry into the United States as of December 30, 1998; his continuous physical presence in the United States since January 5, 1999; and his continuous residence in the United States since December 20, 1998. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on June 5, 2003. The director denied this second application [LIN 03 196 53385] on October 23, 2003, because the applicant failed to establish his date of entry into the United States as of December 30, 1998; his continuous physical presence in the United States since January 5, 1999; and his continuous residence in the United States since December 20, 1998.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on June 5, 2003. Since the initial application was denied on October 23, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 TPS 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 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 June 5, 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).

On August 25, 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 date of entry into the United States as of December 30, 1998, his qualifying 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 a photocopy of a current photo identity document. The applicant, in response, submitted copies of his Employment Authorization cards, a copy of his Honduran birth certificate along with an English translation, copies of his previously filed applications for temporary protected status and employment authorization; and a copy of his receipt notice from the Service dated July 29, 2002. The director denied his application on October 23, 2003, because the applicant had failed to establish his date of entry into the United States as of December 30, 1998, his qualifying continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The director determined that the applicant had established the standard requirements for Honduran photo identity and nationality, and had provided conclusive evidence to establish eligibility for TPS late registration.

On appeal, the applicant provides the following documentation to establish his eligibility for TPS: a copy of a letter dated November 12, 2003, from [REDACTED] Attendance Secretary of Estherville Lincoln Central High School in Estherville, Iowa, who stated that the applicant is a 9<sup>th</sup> grade student; copies of his grade report for the 2003-2004 school year at Estherville-Lincoln Central High School; a copy of a record of his immunizations provided on January 16, 2001 to June 17, 2002; a copy of his grade reports from the Pasadena Unified School District of Pasadena, California, for the school years 2002 and 2003; a copy of a cumulative record report bearing an illegible date; a copy of a withdraw card dated December 13, 2002 from the Pasadena Unified School District; a copy of his Initial Assessment report from Eliot Elementary School dated January 22, 2000; and copies of his school identification cards for the years 2001-2002 and 2002-2003.

The evidence provided by the applicant post-dates the requisite time period for continuous residence and continuous presence for Honduran TPS by almost one year. The earliest date from the evidence submitted along with his appeal in support of his continuous residence and continuous physical presence in the United States is January 22, 2000. In addition, the record of proceedings also contains an affidavit dated July 10, 2001, from an acquaintance [REDACTED] who stated that he met the applicant and his mother when they arrived in the United States in May 1998. However, the statement provided by [REDACTED] regarding the applicant's claimed continuous residence and continuous physical presence in the United States is not supported by corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support this statement. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. The applicant claims to have lived in the United States since May 10, 1998. The applicant would have been nine years old when he entered the United States. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these assertions, such as school grade reports or report cards. 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 determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status 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.