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U.S. Citizenship
and Immigration
Services

MI

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 31 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, Nebraska 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he was eligible for late registration.

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 [LIN ██████████] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 25, 2000, after the initial registration period had closed. That application was denied on January 16, 2001, for late TPS registration. The applicant did not file either a motion or an appeal during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, [LIN ██████████] on August 27, 2001. The director denied this second application on January 15, 2002, because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The director also denied this application because the applicant failed to establish his date of entry, continuous residence in the United States, and continuous presence in the United States during the requisite time periods. On April 9, 2002, the applicant filed a late appeal and the director treated it as a motion. The director made a thorough review of the record of proceedings and determined that the grounds for denial had not been overcome. The director dismissed the motion on July 17, 2002.

On June 23, 2003, the applicant filed his third Form I-821 [LIN ██████████]. The director denied this third TPS application on November 6, 2003, because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The director also denied this application because the applicant failed to establish his date of entry, continuous residence in the United States, and continuous physical presence in the United States during the requisite time periods. The applicant did not file either a motion or an appeal during the requisite timeframe.

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 23, 2003. Since the initial application was denied on January 16, 2001, 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 23, 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 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).

On September 11, 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 residence in the United States prior to December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The applicant, in response, provided some documentation relating to his continuous residence and continuous physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on November 6, 2003. On appeal, 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 Application for Temporary Protected Status within 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 conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second 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.

As stated above, the applicant was requested on September 11, 2003, to submit evidence establishing his qualifying residence and physical presence in the United States. In response, the applicant submitted some evidence in an attempt to establish his continuous physical presence and continuous residence in the United States. The director concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on November 6, 2003.

On appeal, the applicant submits the following documentation: copies of hand-written earnings statements from [REDACTED] for the pay periods from January 5, 1998 to December 7, 1998; copies of some earnings statements from Schmidt Aggregates, for the pay periods of September 18, 2000 to November 26, 2000; copies of his earnings statements from [REDACTED] reflecting check dates of June 28, 2002 to November 21, 2003; copies of his earnings statements from Concrete Express, Inc. for the pay periods from January 25, 1999 to June 27, 1999; a copy of the applicant's US West Communications account summaries dated February 1, 1999, March 1, 1999, June 1, 1999, October 1, 1999, March 10, 2000, May 10, 2000, and October 10, 2000; copies of the auto insurance policy billing statements dated October 24, 1999, February 9, 2000 and May 24, 2000; and copies of his Receipt Notices and Fingerprint Notification from the Service.

The copies of hand-written earnings statements from [REDACTED] Stone provided by the applicant are not supported by any other credible corroborative evidence. The record of proceedings contains a letter dated December 28, 1998, from Mr. [REDACTED] owner of [REDACTED] who stated that the applicant had worked for him. The employment letter has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, Mr. [REDACTED]

does not provide the address where the applicant resided during the period of his employment. It is further noted Mr. [REDACTED] did not indicate the applicant's period of employment with his company. It is also noted that this letter is not in affidavit form. In addition, the earnings statements from Cintas Corporation and Concrete Express, Inc., the US West Communications summaries, and the auto insurance policy statements all post-date the requisite time periods for continuous residence and continuous presence during the requisite timeframe.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States or his continuous physical presence in the United States during the requisite time 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). Consequently, the director's decision to deny the application for TPS on these grounds will also 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.