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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[SRC 04 005 53486]

Office: TEXAS SERVICE CENTER Date: MAY 10 2006

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 B. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 failed to submit a copy of his birth certificate, with English translation.

On appeal, the applicant submits additional evidence, and resubmits some of the documentation that had previously been entered into the record.

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 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 initial TPS application with Citizenship and Immigration Services (CIS), on October 1, 2003. It is noted that the record contains CIS receipt notices dated July 22, 2003, reflecting that the applicant's attempted earlier filing of his TPS and employment authorization applications, were rejected because they lacked the attachment of the proper fees.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period 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 late initial registration. 8 C.F.R. § 244.2(g).

On January 20, 2004, 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 photo identification or a national identity document bearing a photograph and/or fingerprint, along with a copy of his current driver's license. In addition, the applicant was requested to submit a copy of his birth certificate, with English translation. The applicant, in response, provided photocopies of the following documentation:

1. His Honduran national identity document issued on October 6, 1997;
2. The biographic pages of his Honduran passport issued on August 8, 2001, by the Consulate General, Miami, Florida;
3. His Internal Revenue Service (IRS) Individual Taxpayer Identification Number card;
4. A Certificate of Completion, Student Training Alcohol Related Topics Course, approved by the Florida Department of Highway Safety and Motor Vehicles, dated October 16, 2003;
5. A notice from AUTOSA Driving and Traffic School, Miami, Florida, for the Student Training Alcohol Related Topics Course;
6. His State of Florida Identification Card issued on October 30, 2003, and Driver License issued on October 31, 2003;
7. A receipt dated "2/10/99" from [REDACTED] Hollywood, Florida; and,
8. Two receipts for furniture, dated "3/25/98" and "12/10/98."

With the initial application, the applicant had also previously submitted: a Western Union Money Order receipt dated "070102," for \$120, payable to the Immigration and Naturalization Service, now CIS, with a handwritten notation "SRC 02-523-00049;" evidence of the deposit of the Money Order on "09/05/02;" a Money Order Tracer Correspondence pertaining to this money order; an affidavit from [REDACTED] dated September 22, 2003, attesting that the applicant had resided with him from November 25, 1998 through September 30, 2003; a letter from [REDACTED] M.I., Miami, Florida, stating that the applicant was active in the church since August 20, 1998; two money transfer receipts dated January 20, 1999, and April 30, 1999; and, CIS receipt notices dated July 22, 2003, indicating that the filing of his TPS and employment authorization applications were rejected because they lacked the attachment of the proper fees.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 2, 2004.

On appeal, the applicant resubmits: his identity documents issued by the State of Florida; the biographic page of his Honduran passport; and, another copy of his IRS Taxpayer Identification card. In support of the appeal, the applicant also submits the following additional documentation:

1. A copy of his Florida Vehicle Registration card issued on March 19, 2004;

2. A copy of his Florida Automobile Insurance Temporary Identification Card, Affirmative Insurance Corporation, issued on February 11, 2004;
3. A copy of a 2003, IRS Form 1099-MISC, Miscellaneous Income, from Certified Floors FLA, Inc., Miami, Florida, bearing the applicant's name, but not his taxpayer identification number;
4. Copies of the 2003, IRS Form 1040, U.S. Individual Income Tax Return, Schedule C, Profit or Loss From Business, and Schedule SE, Self-Employment Tax, bearing the applicant's name and taxpayer identification number;
5. A receipt dated "04/10/99" from Juan Auto Electric Corp, Miami, Florida; and,
6. A receipt dated "10/4/99" from Solutions Auto Glass, Miami, Florida.

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 Form I-821, Application for Temporary Protected Status, within the initial registration period. It is noted that the receipt numbers for the applicant's earlier attempted filings for TPS were in 2002 and 2003, also outside of the initial registration period, that for Hondurans was from January 5, 1999, through August 20, 1999. 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 for temporary protected status will be affirmed.

The director also found that the applicant failed to submit a copy of his birth certificate, with English translation. On appeal, the applicant also failed to submit these items. The applicant's passport and national identity documents, however, serve to establish his nationality.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence since January 5, 1999. The record does not include any evidence for the year 2000. It is also noted that the furniture receipt dated "3/25/98," listed above at Number 8, precedes the applicant's stated date of entry into the United States on November 5, 1998. The letter dated September 24, 2003, from Pastor [REDACTED] of [REDACTED] Pentecostal, M.I., Miami, Florida, indicates that the applicant was an active member of the church since August 20, 1998, also prior to the applicant's claimed date of entry. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the applicant has not established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

It is also noted that the record contains a Federal Bureau of Investigation (FBI) fingerprint results report pertaining to the applicant's fingerprints. This report reflects the following charges:

An arrest on September 23, 2004, by the Miami, Florida Police Department, during which the applicant received: CHARGE 001-AGGRAVATED BATTERY - BATTERY AGGRAVATED OF A PREGNANT VICTIM, STATUTUE/ORDINANCE- FL784.045(1B), a 2ND DEGREE FELONY; and,

CHARGE 002 - AGGRAVATED BATTERY - BATTERY AGGRAVATED OF A PREGNANT VICTIM, STATUTUE/ORDINANCE- FL784.045(1B), a 2ND DEGREE FELONY.

An alien shall not be eligible for temporary protected status if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The disposition of these charges may have bearing on the applicant's eligibility for TPS, as well as his admissibility. These charges must be addressed in any future proceedings.

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.