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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[LIN 02 237 51690]

Office: NEBRASKA SERVICE CENTER

Date: NOV 02 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:



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 for Temporary Protected Status (TPS) was denied by the Director, Nebraska Service Center on March 3, 2003, due to abandonment. A subsequent motion to reopen was granted on June 3, 2003. On August 26, 2003, the application was denied by the director, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras who is seeking (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 he was eligible for late registration. The director also found that the applicant had failed to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes.

On appeal, the applicant provides a brief statement and copies of documentation previously submitted.

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 record reveals that the applicant did file an initial application for TPS on January 16, 1999, which was during the initial registration period. The director denied that application on February 17, 2000, for abandonment. The director advised the applicant that a denial due to abandonment may not be appealed. The director also advised that the applicant could file a motion to reopen a petition or application denied due to abandonment with evidence that the decision was in error because:

1. The requested evidence was not material to the issue of eligibility;
2. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
3. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The applicant was given 30 days to file a motion. The applicant did not file a motion.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status on July 3, 2002. The director denied this second application on March 3, 2003, also for abandonment. The applicant was given 30 days to file a motion to reopen. The applicant filed a motion to reopen on March 14, 2003.

On motion, the applicant stated, in pertinent part, that:

This in response to the motion to reopen dated March 3, 2003, in which you state that I was given 87 days to submit additional evidence, in order to support my application, and that response was not received by the required date, please review the attached certified return receipt, was signed by [REDACTED] on DECEMBER 12, 2002 AT 7:00 am.

I can't seem to understand what is going on, but the letter requesting more evidence was received on NOVEMBER 2002, in which you are giving me to response [sic] until FEBRUARY 13, 2003, actually the request for more evidence was replied on December 5, 2002.

The director found that the documentation provided by the applicant on December 12, 2002, failed to establish his eligibility for late registration. The director also found that the evidence failed to establish the applicant's 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 denied the application on August 26, 2003.

The first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for 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 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.

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. 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 with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 4, 2002. The initial application was denied for abandonment on February 17, 2000. The applicant re-filed his application for TPS on July 3, 2002, which is 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).

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).

As previously stated the director, in his decision dated August 26, 2003, found that documentation submitted by the applicant in response to the Service's request for additional evidence, dated November 21, 2002, failed to establish his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director also determined that the documentation failed to establish the applicant's 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 denied the application on August 26, 2003.

On appeal, as evidence of his eligibility for late registration, the applicant states, "my wife is a legal & Permanent Resident."

The applicant has provided no documentary evidence to show that during the initial registration period for TPS 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.

The applicant has not submitted any evidence on appeal 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 remaining issues raised by the director to be addressed in this proceeding are whether the applicant has been continuously residing and has been continuously physically present in the United States during the required timeframes.

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.

As previously stated, the director found that the applicant failed to provide evidence to establish his continuous residence and his continuous physical presence in the United States during the required timeframes and, therefore, denied the application on August 26, 2003.

On appeal, the applicant states that the Service gives no credit for the evidence that shows he was in the United States as early as 1990, prior to Hurricane Mitch. The applicant indicates that he entered the United States in

January of 1989 through Tijuana, Mexico, and that he has never left. The applicant also states that he feels he has established nationality and physical presence since 1989.

The applicant submits documentation previously submitted, which consists of the following: 1) a copy of the biographical page of his Honduran passport; a copy of his Social Security card; a copy of Form I-688B, Employment Authorization; a copy of an employment authorization card valid from August 8, 1999 to July 5, 2000; a copy of his Illinois driver's license; copies of Service documentation for February 24, 1999, August 17, 1999, July 7, 2000, July 2, 2001, July 17, 2002, March 18, 2003, and June 3, 2003; a copy of his daughter's birth certificate showing her date of birth as March 3, 1994; a copy of his Marriage License issued on October 24, 1995; a copy of the Judgment of Dissolution of Marriage dated June 10, 2002; a copy of the Certificate of Death, dated November 24, 1995; of the applicant's brother; a copy of a Settlement Statement, dated July 11, 1997; and, a copy of a letter dated December 4, 2002, from the Human Resources Generalist of Consolidated Services, who states that the applicant has been employed by them since November 3, 1990.

The applicant has not provided any additional evidence on appeal to establish that he has been continuously physically present in the United States since January 5, 1999, and that he has been continuously residing in the United States since December 30, 1998. The documentation previously submitted and resubmitted on appeal does not establish the applicant's day-to-day living in the United States during the requisite timeframes. The majority of the documentation covers periods prior to the onset of the qualifying timeframes. In addition, the employment letter from Consolidated Services, without supporting documentary evidence such as employment records or pay stubs, is not sufficient for meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). It is noted that the record contains a W-2, Wage and Tax Statement, for the year 1999, which shows the beneficiary's employer as [REDACTED] Inc., but the above-mentioned letter from Consolidated Services shows that the applicant was employed by them since November 3, 1990. This discrepancy has not been explained. It is incumbent upon the petitioner 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, 591-92 (BIA 1988) 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 visa petition. *Id.*, 582, 591. Further, the applicant's providing Service documentation to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes is simply not what the Service suggested he provide. The applicant was informed that such evidence may include, but is not limited to "employment records, utility bills, receipts showing dates of services, school records, hospital or medical records, money order receipts, dated bank records, rent records or other documents." Service records do not demonstrate the applicant's daily living in the United States from the onset of the qualifying timeframes to the filing date of his TPS application.

The applicant has not met the continuous residence and continuous 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 for these reasons will also be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.