

IDENTIFICATION

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



U.S. Citizenship and Immigration Services

MM



FILE: [REDACTED]
[EAC 03 215 50857]

OFFICE: VERMONT SERVICE CENTER

Date: NOV 07 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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. 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 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 20, 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 Citizenship and Immigration Services (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 fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On August 18, 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 qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The record does not contain a response from the applicant.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on February 4, 2004.

On appeal, the applicant repeats his claim to have lived in the United States since 1998 and submits additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence.

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. 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.

The applicant indicated on his Form I-821 that he entered the United States without inspection in March 1992. In support of his application, he submitted the following:

1. a letter from Money Gram of New York, Freeport, New York, stating that the applicant has been a client of their company since 1998;
2. a letter dated June 18, 2003, from Dr. [REDACTED] stating that the applicant has been his patient since September 22, 1994;
3. a photocopy of a State of New York birth certificate indicating that [REDACTED] was born to the applicant and [REDACTED] in East Meadow, New York, on August 8, 2000;
4. a photocopy of a State of New York birth certificate indicating that [REDACTED] was born to the applicant and [REDACTED] in East Meadow, New York, on April 29, 1995;
5. a notice dated October 2, 2002, from the Freeport Public Schools, Freeport, New York, addressed to the parents or legal guardians of [REDACTED] and,
6. a photocopy of the biographic page of the applicant's Honduran passport issued at the Honduran Consulate in New York, New York, on March 23, 1998.

As stated above, the applicant was requested on August 18, 2003, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. 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 continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant submits the following additional evidence:

7. a Certificate of Baptism indicating that [REDACTED] daughter of [REDACTED] was baptized at [REDACTED] Hempstead, New York, on April 29, 1995;
8. an affidavit dated February 16, 2004, from [REDACTED] stating that he has known the applicant since December 1998;
9. a photocopy of a vaccination record for [REDACTED] and a Children's Learning Center Annual Health Registration Form dated November 20, 1998, from the United Cerebral Palsy Association of Nassau County, Inc., Roosevelt, New York;
10. a photocopy of a Hospital Verification of the Application for the Infant's Social Security Number dated August 9, 2000;
11. a photocopy of a New York States Acknowledgement of Paternity form signed jointly by the applicant and [REDACTED] on August 11, 2000 relating to [REDACTED];
12. a letter dated February 20, 2004, from [REDACTED] stating that the applicant and his daughter, [REDACTED] residing at [REDACTED] Freeport, New York, have been members of his church for over seven years and that the applicant's daughter was baptized at his church on December 15, 1996;
13. an affidavit dated February 16, 2004, from [REDACTED] who states that she is the applicant's sister, attesting that the applicant has been in the United States since December 30, 1998; and,
14. an un-translated letter in the Spanish language.

The un-translated letter in the Spanish language (No. 14 above) cannot be accepted as evidence to establish the applicant's continuous residence and continuous physical presence in the United States. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS must be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The New York birth certificate and baptismal certificate (Nos. 4 and 7 above) and the photocopy of the applicant's Honduran passport (No. 6 above) do not establish the applicant's qualifying continuous residence and continuous physical presence because they predate the requisite periods. The Freeport Public Schools notice to the parents of [REDACTED] (No. 5 above) and her vaccination records (No. 9 above) do not establish the applicant's continuous residence and physical presence because they do not relate to the applicant.

The letters from Money Gram (No. 1 above), Dr. [REDACTED] (No. 2 above), and [REDACTED] (No. 12 above), and the affidavits from Mr [REDACTED] (No. 8 above) and Ms. [REDACTED] (No. 13 above) are not sufficient to establish the applicant's continuous residence and continuous physical presence because they are not supported by any contemporaneous evidence other than the documents relating to the birth of the applicant's son on August 8, 2000 (Nos. 3, 10, and 11 above). Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

Although the evidence described at Nos. 3, 10, and 11 above reflect the applicant's presence in the United States in 2000, the applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. He 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.

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