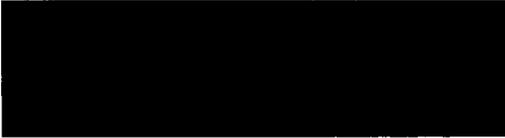




U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: NOV 21 2005

[EAC 03 203 50615]

IN RE:

Applicant:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 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 because the applicant had failed to establish that he: (1) was eligible for late registration; (2) is a national of Honduras or Nicaragua; (3) had continuously resided in the United States since December 30, 1998; and (4) had been continuously physically present from January 5, 1999, to the date of filing the application.

On appeal, the applicant submits a statement and resubmits evidence previously furnished and contained in the record of proceeding.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 parole; 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

Persons applying for TPS offered to Hondurans and Nicaraguans 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 time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed his TPS application on June 13, 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 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 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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding 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 from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

In a notice of intent to deny dated March 26, 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, in response, provided his father's birth certificate, Social Security card, and Employment Authorization Card as evidence that he is the child of an alien who was granted TPS.

The director determined that for TPS purposes, the applicant was no longer considered a child, and denied the application on May 10, 2004.

On appeal, the applicant asserts that he qualifies as a child of an alien currently eligible to be a TPS registrant. To support his claim, he resubmits copies of his father's birth certificate, Social Security card, and Employment Authorization Card.

Regulations at 8 C.F.R. § 244.2(f)(2)(iv) simply allow children of aliens who are TPS-eligible to file applications after the initial registration period had closed; however, this regulation does not relax the requirements for eligibility for TPS. While the record is devoid of the applicant's birth certificate, the applicant indicated on his TPS application that he was born on February 13, 1981. Section 101(b)(1) of the Act defines the term "child" to mean an unmarried person under 21 years of age. The applicant turned 21 years of age on February 13, 2002. As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following his 21st birthday to file an application for late registration to meet the requirement described in 8 C.F.R. § 244.2(f)(2)(iv). However, the TPS application was not filed until June 13, 2003. Accordingly, the applicant, during the initial registration period, did not meet the qualification of a child of an alien currently eligible to be a TPS registrant described in 8 C.F.R. § 244.2(f)(2)(iv).

The applicant has failed 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 TPS application on this ground will be affirmed.

The second issue in this proceeding is whether the applicant is a citizen or national of Honduras.

The applicant has submitted no evidence to support his TPS application indicating that he was born in Honduras.

In a notice of intent to deny dated March 26, 2004, the applicant was requested to submit evidence to show that he is a citizen or national of Honduras. The director listed examples of evidence he may submit to establish citizenship and nationality. In response, the applicant submitted his father's birth certificate.

The director determined that the applicant had failed to establish that he is a citizen or national of Honduras and denied the application on May 10, 2004.

On appeal, the applicant neither addressed nor submitted any evidence to establish his citizenship and nationality. It is noted that he again resubmitted a copy of his father's birth certificate. Consequently, the director's decision to deny the TPS application on this ground will also be affirmed.

The third issue in this proceeding is whether the applicant has established continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing the application.

The record shows that the applicant submitted the following documents with his TPS application in an attempt to establish continuous residence and continuous physical presence in the United States:

- (1) A statement from [REDACTED] of the [REDACTED] Assemblies of God in Ventnor, New Jersey, indicating that the applicant and his family have been regular attendees at the Church since the year 1999.
- (2) Two Spanish language greeting cards.

- (3) Two letters, one dated April 15, 1998, and the other dated November 2, 1998, both written in the Spanish language.
- (4) A statement dated June 6, 2003, from [REDACTED] indicating that he has known the applicant (and other members of his family) since March 1999.
- (5) A copy of a lease agreement for rental of an apartment to begin on April 5, 1998, and to terminate on April 4, 1999. The agreement listed the applicant as one of the four tenants.

In a notice of intent to deny dated March 26, 2004, the applicant was requested to submit additional evidence to establish continuous residence in the United States since December 30, 1998; and continuous physical presence from January 5, 1999, to the date of filing the application. In response, the applicant submitted a copy of his father's birth certificate, Employment Authorization Card, and Social Security card.

The director determined that the applicant had failed to establish continuous residence and continuous physical presence during the requisite period and denied the application on May 10, 2004.

On appeal, the applicant resubmits the documents listed as Nos. 2 and 3 above. The applicant, however, failed to submit the English translations of these documents.

C.F.R. § 103.2(b)(3) states, in part:

Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which 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 statement from Rev. [REDACTED] (No. 1 above) 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)(v). Specifically the pastor does not explain the origin of the information to which he attests, how he knows the applicant and how often he sees him, and the dates the applicant has resided in his parish. While he states that the applicant and his family are regular attendees at the Church, he failed to show inclusive dates of the applicant's membership at the church, if he is in fact a registered member, and the address where the applicant resided during the membership period. Furthermore, the statement, without supporting documentary evidence, is insufficient to establish continuous residence and continuous physical presence.

Mr. [REDACTED] (No. 4 above) states that he has known the applicant (and other members of his family) since March 1999. He failed to provide any specifics regarding the nature, circumstances, or origin of his acquaintanceship with the applicant, and the address where the applicant resided during the time of their acquaintance. Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided by the applicant to establish his qualifying residence in the United States was not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since February 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The authenticity or validity of the lease agreement dated April 5, 1998 (No. 5 above) is questioned. The lease agreement was signed by [REDACTED] and by the applicant.

There is no evidence that the applicant signed the lease agreement on that particular date, April 5, 1998. It is noted that the applicant was a minor at that time.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has failed to establish that he has met the criteria for continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application on these grounds 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.