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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 04 042 51511]

Office: VERMONT SERVICE CENTER

Date: OCT 31 2005

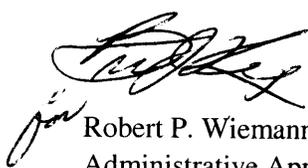
IN RE: Applicant: [REDACTED]

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be a native and citizen of Honduras who is applying for 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 determined that the applicant failed to establish that he is a citizen or national of Honduras. The director further determined that the applicant 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 one affidavit in support of the appeal. The applicant also provides copies of previously submitted documentation.

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.

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

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 in the United States 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.

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 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 own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant filed his initial application with the Immigration and Naturalization Service now Citizenship and Immigration Services (CIS), on September 24, 2001. The record also reflects that in a Form I-797, Notice of Action, dated March 12, 2002, the applicant was requested to submit evidence to establish 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 was also requested to submit evidence to establish that during the initial registration period of January 5, 1999 through August 20, 1999, he was eligible to file for “late initial registration” by meeting one of the four conditions described below:

- a. was in valid nonimmigrant status, or had been granted voluntary departure or relief from removal;
- b. had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal;
- c. was a parolee or had a pending request for parole; or,
- d. was the spouse or child (under 21) of an alien currently eligible to be a TPS registrant.

If the condition described above expired or was terminated, you must show that you filed for late initial registration within 60 days from the expiration or termination of the qualifying condition listed above.

In response, the applicant provided a letter dated March 18, 2002, from the human resource manager of [REDACTED] company who stated that the applicant has been employed by them since “11/30/00 fulltime (40 hours a week) and earns \$6.50 per hour.”

The director found that the applicant, in response to the notice of action, failed to establish his eligibility for late registration. The director also found that the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. The director denied the application on June 6, 2002.

In a letter dated June 18, 2002, the applicant requested that the director reopen and review his case. The applicant provided a letter dated June 18, 2002, from Cacique Foods (dba: [REDACTED]); which states that the applicant worked there “From June 1996 TO December 1998.”

The director dismissed the applicant's motion to reopen because the motion "does not provide new facts to be proved nor does it give reasons for reconsideration."

The applicant filed another TPS application on November 5, 2003. In a notice of intent to deny, dated March 24, 2004, the applicant was requested to submit evidence to establish his eligibility for late registration. The applicant was also requested to submit evidence to establish that he has been continuously residing in the United States since December 30, 1998, and that he has been continuously physically present in the United States since January 5, 1999. The applicant was further requested to submit evidence to show that he is a citizen or national of Honduras. The applicant failed to respond to the notice of intent to deny.

The director found that the applicant failed to establish his eligibility for late registration. The director also found that the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. The director further determined that the applicant failed to establish that he is a citizen or national of Honduras. The director denied the application on June 14, 2004.

On appeal, the applicant states that he knows he made a mistake the first time by applying late for TPS, but he is now appealing to the Service not to cancel his case.

As previously stated, 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 or 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 applicant provides no additional documentary 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 for this reason will be affirmed.

The second issue raised by the director to be addressed in this proceeding is whether the applicant has established that he is a citizen or national of Honduras.

An applicant is eligible for temporary protected status only if such alien establishes that he or she is a national of a foreign state designated under section 244(b) of the Act. 8 C.F.R. § 244.2(a).

The applicant claims on his TPS application that he is a citizen of Honduras. However, the record contains no documentary evidence to establish such. Consequently, the applicant has failed to establish that he is a citizen or national of Honduras. The director's decision to deny the application for temporary protected status for this reason will also 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, as the applicant failed to respond to the above-mentioned notice of intent to deny, he failed to establish his continuous residence and his continuous physical presence in the United States during the required timeframes. The director denied the application on June 14, 2004.

On appeal, the applicant states that he came to the United States in 1988, and has “remain in this freedom country for more than 15 years.” It is noted that the applicant indicated on his TPS application that he first entered the United States in 1988, and again on March 14, 1998. This contradicts the applicant’s aforementioned statement that he has remained in the United States for more than 15 years. 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, 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 application. *Id.*, 582, 591.

The applicant, in support of the appeal, submits one affidavit from [REDACTED] who states that he and the applicant are relatives. He also states that the applicant “came to the United States on [sic] 1988 for the first time and come back to Honduras and came again without inspection on March 14, 1998 thr. [sic] Brownsville-Texas.”

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. Documentation previously submitted is dated either before or more than one year after the onset of the qualifying timeframes. The record contains no documentary evidence to demonstrate the applicant's day-to-day living in the United States from the onset of the qualifying timeframes (December 30, 1998 – January 5, 1999) to the year 2000, which is the earliest date of documentary evidence contained in the record that is dated after December 30, 1998. The one affidavit submitted on appeal 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). 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.