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**U.S. Citizenship
and Immigration
Services**

MM

SEP 06 2005

FILE:

[REDACTED]
[LIN 03 233 30063]

Office: NEBRASKA SERVICE CENTER

Date:

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, Nebraska Service Center. The director subsequently dismissed a motion to reopen the case. The case 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.

On November 3, 2003, the director denied the application after determining that the applicant had failed to submit evidence of his nationality, identity, qualifying continuous residence in the United States since February 13, 2001, qualifying continuous physical presence since March 9, 2001, and eligibility for late registration.

On December 9, 2003, the applicant filed a motion to reopen the director's decision. On December 22, 2003, the director dismissed the applicant's motion and reaffirmed his decision to deny the application. The applicant filed the instant appeal of that decision on January 21, 2004. On appeal, the applicant submits a letter and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on July 29, 2003, more than three years and eleven months after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she 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 or she 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 must 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).

On August 21, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration. The applicant was also requested to submit evidence to establish his nationality and identity, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record reflects that the applicant failed to respond to the request.

The director determined that the applicant had not submitted sufficient evidence to establish his nationality, identity, qualifying continuous residence and continuous physical presence in the United States during the requisite time periods, and eligibility for late registration. The director denied the application on November 3, 2003.

On December 9, 2003, the applicant filed an appeal of the director's decision. Because the appeal was not filed within the required time period, the director accepted the appeal as a motion to reopen. In support of the motion, the applicant submitted documentation relating to his residence and physical presence in the United States. He did not submit any evidence to establish his eligibility for late registration. He also did not submit any evidence to establish his nationality and identity.

The director determined that the applicant had failed to establish his eligibility for late registration and dismissed the motion on December 22, 2003.

On appeal of that dismissal, the applicant states that he has been living in the United States since 1980, is a hard worker, and supports his four children and former spouse in Honduras. In support of the appeal, the applicant submits the following additional documentation: his Honduran passport; a temporary foreign identification document, issued by the Honduran Consulate in Chicago, Illinois; an abstract of his Honduran birth certificate, with English translation; and, photocopies of his 1995, 1996, 1997, and 1998 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements.

It is concluded that the applicant has established his nationality and identity. He has also submitted documentation in an attempt to establish his qualifying continuous residence and continuous presence in the United States during the requisite time periods. However, this evidence does not mitigate the applicant's failure to file his Form I-821 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 decision to deny the application for temporary protected for will be affirmed.

Beyond the decision of the director, it is concluded that all of the documentation submitted by the applicant is dated after the dates required to establish qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. Therefore, the application must also be denied for these reasons.

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.