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

M1



FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: DEC 06 2006

[WAC 06 006 70111]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 submit sufficient evidence to establish that he was eligible for late registration.

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 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 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 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 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, 2007, 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 October 6, 2005.

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).

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).

In a notice of intent to deny dated March 1, 2006, the applicant was requested to submit: (1) evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2); (2) 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; and (3) the final court dispositions of all of his arrests, including his arrest listed on the Federal Bureau of Investigation (FBI) fingerprint results report. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence in the United States. He also provided a letter from the State of California, Department of Justice, Bureau of Criminal Identification and Information, stating that a search of their record reveals no criminal history record in the files of the Bureau relating to [REDACTED]

The director determined that the applicant, in response, had failed to submit sufficient evidence to show that he was eligible for late registration and denied the application on June 1, 2006.

On appeal, the applicant asserts that he did not file timely because he did not have any money and also he was "legalizing" through his mother, and that they were misled by a "Notario" who told them that they could not file for TPS. He requests reconsideration because he has a United States citizen child and he needs a decent job in order to give his child a better life.

The record indicates that the applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his permanent resident mother. The record does not contain evidence that the applicant filed an application for adjustment of status to permanent residence (Form I-485) based on the approved Form I-130, and that the adjustment application was pending during the initial registration period. The Form I-130, alone, does not convey eligibility for TPS.

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.

Beyond the decision of the director, it is noted that documents contained in the record of proceeding are insufficient to establish that the applicant 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). Additionally, although the record of proceeding contains a Honduran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for these reasons.

Furthermore, the FBI fingerprint results report indicates that the applicant was arrested on March 20, 2000, in Los Angeles, California, for "perjury." Although the applicant subsequently furnished a letter of clearance from the Department of Justice, Bureau of Criminal Identification and Information, indicating that their record reveals no criminal history record in the files of the Bureau relating to [REDACTED] it is noted in the FBI report that the applicant used the alias name of [REDACTED] when he was arrested. Additionally, the applicant's correct name is [REDACTED]. Moreover, the applicant failed to provide the final disposition of the arrest from the court where the case was heard. The application will also be denied for this reason.

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.