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U.S. Citizenship
and Immigration
Services

M1

FILE: [REDACTED]
[EAC 02 175 50734]

Office: VERMONT SERVICE CENTER

Date: FEB 23 2006

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.


for 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 is 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 found 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 additional 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 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 record reflects that the applicant filed his initial application with Citizenship and Immigration Services (CIS), on April 12, 2002.

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 of proceeding confirms that the applicant filed his application for TPS on April 12, 2002, after the initial registration period had closed. 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).

In a notice of intent to deny, dated June 17, 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 to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. The applicant failed to respond to the notice of intent to deny.

The director found that the applicant failed to overcome the grounds for denial. The director denied the application on August 4, 2003. The applicant was given 30 days to file an appeal.

The applicant filed an appeal on September 5, 2003. The AAO, in its decision dated March 29, 2005, determined that the director's decision dated August 4, 2003, did not clearly indicate the specific basis for the denial in accordance with 8 C.F.R. §103.3. The AAO remanded the case to the director to set forth the specific reasons for the denial and entry of a new decision.

In a decision dated May 18, 2005, the director, after a complete review of the record, determined that the applicant had failed to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The director also determined that the applicant failed to establish his eligibility to file for late registration. The director denied the application on said date. The applicant was given 30 days to file an appeal.

The applicant filed an appeal on June 13, 2005.

On appeal, the applicant states that he has been in the United States since 1999, and has not returned to his country in five years.

The applicant has provided no documentary evidence on appeal to establish his eligibility for late registration. Therefore, the applicant does not qualify for late registration as described in 8 C.F.R. § 244.2(f)(2). The director's decision to deny the application for temporary protected status will be affirmed.

The remaining issues to be addressed in this proceeding are whether the applicant has established his continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

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 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.

As previously stated, the director, in his decision dated March 29, 2005, found that the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the required timeframes.

On appeal, the applicant submits: a copy of a lease dated October 1, 1999; copies of generic rent receipts for October 1, 1999, November 3, 1999, January 2, 2000, March 1, 2000, and April 3, 2000; a copy of a Notice of Cancellation from The Service Kings, dated December 15, 1999; a copy of a receipt from The Service Kings, dated December 15, 1999; a copy of a medical bill dated November 18, 1999; a copy of a "Sales Receipt" from [REDACTED] November 18, 1999; a copy of a Transcript of Driver History Record from the Virginia Department of Motor Vehicles as of June 3, 2005; and copies of a passenger receipt and a boarding pass from American Airlines, both dated July 14, 1999.

The applicant has not provided sufficient documentary evidence on appeal to establish that he has been continuously residing in the United States since December 30, 1998, and continuously physically present in the United States since January 5, 1999. The documentation presented does not begin until almost seven months after the onset of the qualifying timeframe. In addition, the applicant indicates on his TPS application that he entered the United States on July 14, 1999. Therefore, he could not possibly establish continuous residence and continuous physical presence in the United States from the onset of the qualifying timeframes to the date of his claimed entry on July 14, 1999. The applicant has not established that he has 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 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 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.