



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 03 242 50368]

Office: VERMONT SERVICE CENTER

Date: FEB 27 2006

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont Service Center. 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.

The director denied the application after determining that the applicant had failed to submit evidence of his eligibility for late registration. The director also determined that the applicant had failed to submit evidence to establish his nationality, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

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 August 13, 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 fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 October 7, 2003, the director requested the applicant to submit evidence establishing his eligibility for late registration. 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 eligibility for TPS and denied the application on January 15, 2004.

On June 25, 2004, the applicant filed a motion to reopen the director's decision. In support of the motion, the applicant submitted two affidavits from acquaintances concerning his residence and physical presence in the United States.

The director determined that the applicant had failed to establish his eligibility for late registration. The director also determined that the applicant had failed to submit evidence to establish his nationality, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director reaffirmed his decision to deny the application on August 13, 2004.

On appeal, the applicant states that he is eligible for TPS in that he is a citizen of Honduras who entered the United States prior to November 1998 and established residence in the United States prior to January 1999. In support of the appeal, the applicant submits photocopies of his Honduran birth certificate, with English translation, and the identification page from his Honduran passport.

It is concluded that, on appeal, the applicant has submitted sufficient evidence to establish his nationality. Therefore, the decision of the director to deny the application for failure to establish his nationality will be withdrawn.

The record confirms that the applicant filed his TPS application after the initial registration period had expired. The applicant has submitted documentation in an attempt to establish his continuous residence and continuous physical presence in the United States. However, this documentation 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 decision of the director to deny the application for failure to establish eligibility for late registration will be affirmed.

Furthermore, the documentation submitted by the applicant does not include sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States. The applicant claims to have lived in the United States since May 1998. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. Consequently, the director's decision to deny the 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.