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U.S. Citizenship
and Immigration
Services

MI

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 05 2006

[EAC 03 061 54524]

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:

[REDACTED]

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The matter 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 this application after determining that the applicant had not established his eligibility for late initial registration, and that the applicant's initial TPS application [EAC 99 197 51321] had previously been denied due to abandonment for failure to appear for fingerprinting.

On appeal, counsel for 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 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.

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, 2006, 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 reveals that the applicant filed this TPS application [EAC 03 061 54524], marked as an application for re-registration, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on December 13, 2002. The record also reflects that the applicant had filed an initial application for TPS [EAC 99 197 51321], on April 19, 1999, during the initial registration period.

The burden of proof is upon the applicant to establish that he 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 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 reveals that the applicant's initial TPS application was denied due to abandonment on September 26, 2000, after the applicant failed to appear for his scheduled fingerprinting appointment. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. On October 30, 2000, prior counsel for the applicant filed a motion to reopen the denial due to abandonment, maintaining that the fingerprinting and denial notices had been sent to the wrong address. While no written decision was rendered indicating the reopening of the case, the matter was reopened and the applicant was again requested to appear for fingerprinting. In a second denial letter dated July 12, 2001, prior counsel was notified that the initial TPS application was again being denied due to abandonment because the applicant had again failed to appear for fingerprinting.

The applicant continued to file annual applications marked as applications for re-registration or extension of TPS benefits. It was not until the applicant's December 13, 2002, Form I-821, Application for Temporary Protected Status, that his application, also marked as an application for re-registration, was instead accepted as a new filing for TPS under the provisions of late initial registration. This application was then initially denied due to abandonment on April 24, 2003, after the director determined that the applicant had failed to submit the required fee for fingerprinting. On May 8, 2003, counsel filed a motion to reopen with evidence that the fingerprinting fee had, in fact, been properly filed. The director reopened the matter and subsequently denied this application after determining that the applicant had failed to establish his eligibility for late initial registration under the provisions described in 8 C.F.R. § 244.2(f)(2) and (g) (listed above).

Current counsel states that the appeal is based upon fundamental fairness as the applicant registered within the initial registration period, and Service error resulted in the denial of his initial TPS application, as well as the improper denial of his subsequent submission. In support of the appeal, counsel submits: a brief outlining the chronology of the case; CIS receipt notices for the April 19, 1999, December 13, 2002, and interim TPS and employment authorization applications; the September 26, 2000 denial letter; the CIS receipt notice for the Motion to Reopen filed on October 30, 2000; a Case Status report from the online uscis.gov website indicating that as of May 24, 2004, the applicant's initial TPS application [EAC 99 197 51321] had been reopened as of November 20, 2000, and remained pending; the April 24, 2003 denial decision; and, the CIS receipt notice for the May 8, 2003, Motion to Reopen. Counsel asserts that since the applicant never received adjudication of his reopened initial TPS application, technically that application is still pending.

Prior counsel asserted that the Fingerprint notification had been mailed to the incorrect address. The record contains one letter from prior counsel dated October 21, 1999, and three letters from current counsel dated August 5, 2003, September 22, 2004, and March 3, 2005, each indicating that the applicant had moved to a new address each time. In the interim, the applicant's address changes were noted on his TPS applications submitted as requests for extension of TPS benefits. Prior counsel's assertion that the fingerprint notification and July 12, 2001, decision were improperly mailed is not persuasive. The decision dated July 12, 2001, was mailed to the last address as provided by the applicant; he did not provide a new address until a subsequent application that was received by the service center on July 20, 2001, after the decision had been mailed. Further, the fingerprint notifications and the denial letter also were mailed to then counsel of record, constituting notice to the applicant. Neither the fingerprint notifications nor the denial letter were returned by the United States Postal Service (USPS) as undeliverable.

In the interim, the applicant's record contains the Federal Bureau of Investigation (FBI) fingerprint results reports, processed by the FBI on January 28, 2004, reflecting that the applicant was identified as not having a criminal or

other record as of that date. It is noted that the fingerprint notification in that instance was mailed to both the applicant and counsel, and that the applicant appeared for fingerprinting, although the applicant's copy of the fingerprint notification was returned by the USPS, indicating: "Attempted Not Known."

On appeal, current counsel submits the CIS receipt notices for the October 30, 2000, Motion to Reopen, along with the previously mentioned case status inquiry report. Under the circumstances, it is determined that the initial denial due to abandonment was not made in error; the error rather is in the failure to update the online systems to reflect the denial.

The applicant's initial Form I-821 was properly filed on April 19, 1999. That initial application was denied by the director. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on December 13, 2002. Since the initial application was denied, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

The director determined that the applicant had failed to establish he was eligible for late registration and denied this application on March 30, 2004.

On appeal, counsel for the applicant states that this denial is in error because the original I-821 was still pending.

As noted above, the original denial due to abandonment was not made in error. Therefore, the subsequent submission must be considered as an application for late initial registration. 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 status will be affirmed.

Beyond the decision of the director, the applicant failed to submit sufficient evidence of 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 record contains photocopies of the following evidence: the applicant's Honduran birth certificate, with English translation; his Honduran national identity document issued on September 28, 1989; his Honduran Social Security card; generic rent receipts for [REDACTED] dated in June of 1996, and August through December of 1996; a notarized statement dated October 15, 1999, indicating that the applicant resided at [REDACTED] "from November, 1998 to present;" two letters in Spanish dated May 19, 1998, and June 11, 1998, without mailing envelopes or translations; earning

statements dated in February through May of 2000; generic rent receipts dated February through April 2000; an RCN wireless bill dated March 20, 2000; a PPL Electric bill dated May 4, 2000; a UGI Customer Application dated February 4, 2000; and, a letter from Bell Atlantic regarding services dated December 20, 1999.

The applicant has not submitted any evidence to establish his entry into the United States prior to December 30, 1998, or his continuous residence or continuous physical presence in the United States prior to the documentation dated December 20, 1999. The notarized statement indicating that the applicant resided at [REDACTED] from November 1998 through October 1999 has little evidentiary value as it conflicts with the generic rent receipts signed by the same individual that indicate the applicant's residence at [REDACTED] in 1996. 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. 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 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify these discrepancies. The applicant has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must be denied for these reasons.

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.