



U.S. Citizenship  
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FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: **JUL 31 2006**

[EAC 03 240 50442]

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.

for Robert P. Wiemann, Chief  
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 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 establish that he: (1) is a national of Honduras or Nicaragua; (2) had continuously resided in the United States since December 30, 1998; and (3) had been continuously physically present from January 5, 1999, to the date of filing the application.

On appeal, counsel 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.

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 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).

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. It is noted that the applicant filed his initial TPS application (under the name of J [REDACTED] on August 21, 2003. 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). A review of the record of proceeding indicates that the applicant filed Form I-589, Request for Asylum in the United States, on April 4, 1989 (under the name of [REDACTED]), and was pending during the initial TPS registration period. The asylum application was administratively closed on November 1, 2004, based on the applicant's failure to appear for a scheduled interview regarding that application on June 10, 2004. Accordingly, the applicant has met the criteria for late initial registration as described in 8 C.F.R. § 244.2(f)(2).

The second issue in this proceeding is whether the applicant has established 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.

In a notice of intent to deny dated October 29, 2003, the applicant was requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the requisite period. The director noted that the only documentation furnished by the applicant, in response, was a copy of Form W-2, Wage and Tax Statement, for the year 1999; therefore, the director determined that the evidence furnished was insufficient to cover the time period required for TPS and denied the application on April 14, 2005.

On appeal, counsel submits the payroll records of [REDACTED] from December 19, 1997 through April 15, 2005, issued by [REDACTED], McLean, Virginia.

The evidence furnished by the applicant on appeal, in conjunction with other evidence included in the record of proceeding, is sufficient to establish that the applicant has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant has overcome these grounds for denial.

The third issue in this proceeding is whether the applicant is a citizen or national of Honduras.

The director determined that the applicant had failed to establish that he is a citizen or national of Honduras and denied the application on April 14, 2005.

On appeal, counsel submits: (1) a copy of a Republic of Honduras passport issued in "HND" on February 2, 2005, to [REDACTED] with date of birth October 19, 1945; (2) a copy of a Republic of Honduras birth certificate of [REDACTED] born on October 18, 1945; (3) a copy of the front side of a Republic of Honduras Identification Card (Cedula) issued to [REDACTED] (a similar copy of this Cedula was furnished with the asylum application and contained in the record); the reverse side of the Cedula shows the date of birth of [REDACTED] as October 18, 1945; (4) a copy of a Department of the Army, Civilian Identification (Ft. Belvoir, Virginia), issued to [REDACTED]

It is noted that the applicant listed his name as [REDACTED] on all Forms I-821, Application for Temporary Protected Status, and Forms I-765, Application for Employment Authorization, and on the Department of the Army identification card. The Form I-589, the Honduran birth certificate, the Cedula, and the earnings statements are under the name of [REDACTED]. Lastly, the Honduran passport is under the name of [REDACTED] with a different date of birth.

The applicant has not established that [REDACTED] and [REDACTED] are one and the same person. The applicant neither addressed nor furnished any evidence to justify or rectify the discrepancies of the names and dates of birth of the individuals named above.

Accordingly, the applicant has failed to establish his identity and nationality. The director's decision to deny the application on these grounds will be affirmed.

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 dismissed.