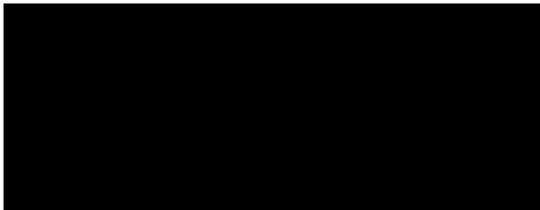


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U.S. Citizenship
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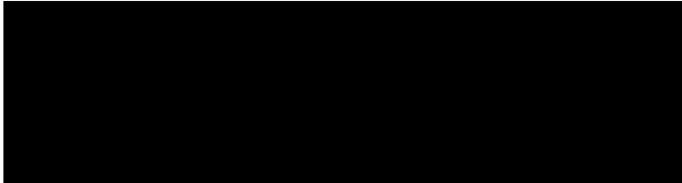
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Office: VERMONT SERVICE CENTER

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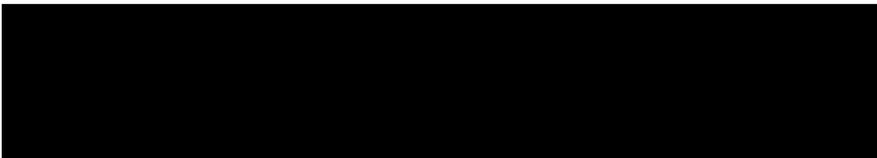
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 N. Gomez 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 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 required timeframes. Finally, the director found that the applicant had failed to establish his nationality and identity.

On appeal, counsel provides additional documentation in support of the appeal.

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 has established his nationality and identity.

8 C.F.R. § 244.9(a) states, in pertinent part:

(1) *Evidence of identity and nationality.*

Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and /or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

On appeal, counsel did not address the issue of the applicant's identity and nationality.

The applicant has provided no documentary evidence to establish his identity and nationality as required in 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

The second 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, 2007, 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 July 2, 2003.

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 July 2, 2003, 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 that 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 September 3, 2003, the applicant was requested to submit evidence to establish his eligibility for late registration. The applicant was also requested to submit evidence to establish 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 applicant was further requested to submit evidence to establish his nationality and identity. The applicant failed to respond to the notice of intent to deny.

The director found that the applicant had failed to establish his eligibility for late registration. The director further found that the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. Finally, the director found that the applicant had failed to establish his nationality and identity. The director denied the application on February 9, 2004.

On appeal, counsel does not address the issue of late registration.

As previously stated, the applicant filed his TPS application on July 2, 2003. The record indicates that on June 27, 1994, the applicant filed Form I-589, Request for Asylum in the United States. The record also indicates that on May 30, 2000, the director of the Newark, New Jersey Asylum Office found that the applicant had not established his eligibility for asylum. The director referred the applicant's case to an immigration judge. The director also informed the applicant that his referral notice "is not a denial of your asylum application." In a Notice of Hearing in Removal Proceedings, dated September 19, 2000, the applicant was scheduled for a Master Hearing before the Immigration Court on December 26, 2000. In a second Notice of Hearing in Removal Proceedings, dated December 26, 2000, the applicant was scheduled for a Master Hearing before the Immigration Court on May 1, 2001. In a third Notice of Hearing in Removal Proceedings, dated May 1, 2001, the applicant was scheduled for a Master Hearing before the Immigration Court on October 30, 2001. In a fourth Notice of Hearing in Removal Proceedings, dated October 30, 2001, the applicant was scheduled for a hearing before the Immigration Court on August 13, 2002. In a fifth and final Notice of Hearing in Removal Proceedings, dated August 13, 2002, the applicant was scheduled for a Master Hearing before the Immigration Court on October 11,

2002. On October 11, 2002, the Immigration Judge “ordered that the case be administratively closed and be considered no longer pending before the Immigration Judge,” because “respondent has applied (late filing) for TPS.”

The applicant had within 60 days after the termination of this hearing to file for late registration. The applicant did not file his TPS application within the allotted timeframe. The applicant has not met one of the qualifying criteria for late registration as described in 8 C.F.R. § 244.2(f)(2). Consequently, the director’s decision to deny the application for temporary protected status for this reason will be affirmed.

The remaining issues to be addressed in this proceeding are whether the applicant has been continuously residing and has been continuously physically present in the United States during the requisite timeframes.

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.

As previously stated, the applicant was requested to submit evidence to establish 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 applicant failed to respond to the notice of intent to deny. The director found that the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes and denied the application on February 9, 2004.

On appeal, counsel for the applicant presents numerous documents such as tax records, social security documentation, and employment records that are sufficient in demonstrating the applicant’s continuous residence and his continuous physical presence in the United States during the requisite timeframes. The applicant has overcome this portion of the director’s decision. However, the application may not be approved, as the applicant failed to establish his eligibility to file for late registration, and failed to provide evidence to establish his nationality and identity.

The application will be denied for the above stated reasons, with each considered as an independent 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 not met this burden.

ORDER: The appeal is dismissed.