

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI

FILE:

OFFICE: California Service Center

DATE:

APR 03 2007

[WAC 05 141 71355]

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.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 on the grounds that the applicant failed to establish that he continuously resided in the United States since December 30, 1998, and was continuously physically present in the country since January 5, 1999; and that he was eligible for late TPS registration.

On appeal the applicant requests that his case be reviewed and submits a photocopy of his Honduran passport.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

Honduran nationals applying for TPS must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on February 18, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions 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 shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). See 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. See 8 C.F.R. § 244.9(b).

On February 27, 2006, the service center issued a Notice of Intent to Deny (NOID) in which it requested the applicant, who claims to have entered the United States without inspection on June 6, 1998, to submit evidence that he was eligible for late registration and met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador, as well as evidence of his date of entry into the United States and his nationality/identity. In response the applicant submitted a photocopy of his Honduran passport and three letters from acquaintances in the United States who state they have known the applicant since 1998 or 1999.

On April 17, 2006, the director denied the application on the grounds that the applicant failed to establish that he was continuously resident in the United States from December 30, 1998, and continuously physically present

in the United States since January 5, 1999; and that he was eligible for late TPS registration under one of the qualifying conditions enumerated at 8 C.F.R. § 244.2(f)(2).

The applicant filed a timely appeal, but the only additional documentation he submitted was a photocopy of his current Honduran passport, issued in 2006.

Thus, there is still no evidence in the record that the applicant, who filed his initial TPS application five and one-half years after the end of the initial registration period for Hondurans, is eligible for late registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). Furthermore, the documentation of record does not meet the evidentiary standards set forth at 8 C.F.R. § 244.9(a)(2), to establish that the applicant has been continuously physically present in the United States since January 5, 1999, and continuously resident in the United States since December 30, 1998, as required for TPS applicants from Honduras under 8 C.F.R. § 244.2(b) and (c). If the applicant has lived in the United States since June 1998, as he claims, it is reasonable to expect that he would have some type of contemporaneous documentation. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence in the United States. Accordingly, the director's denial of the application on the grounds of late filing and insufficient evidence of continuous residence and physical presence in the United States 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 that burden.

ORDER: The appeal is dismissed.