

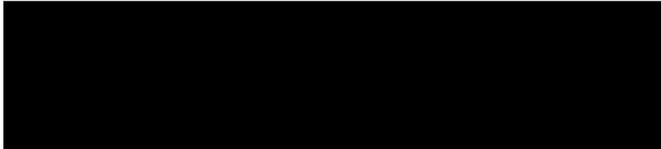
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 28 2007
[SRC 03 187 54407]
[EAC 07 178 50174 – Motion]

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in cursive script that reads "John H. Vaughan".

for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC). The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion 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 applicant filed his initial TPS application at the TSC on June 23, 2003, under Citizenship and Immigration Services (CIS) receipt number SRC 03 187 54407. The TSC Director denied that application on January 15, 2004, because the applicant failed to establish his eligibility for late TPS registration. The applicant filed an appeal on February 9, 2004, which was dismissed by the Director, now Chief, of the AAO on September 2, 2005. In addition to affirming the TSC Director's decision on late registration, the AAO Chief determined that the applicant had not established his continuous residence and physical presence in the United States for the requisite time periods. On October 24, 2005, the applicant filed a motion to reopen, which was dismissed by the AAO on May 3, 2007.¹

The applicant filed another TPS application at the California Service Center (CSC) on December 23, 2004 [receipt number WAC 05 084 74021], and indicated that he was re-registering for TPS. On July 23, 2005, the CSC Director denied the re-registration application because the applicant had not been granted TPS previously, and therefore was not eligible to re-register for TPS. The applicant filed an appeal on August 3, 2005, which was dismissed by the AAO on May 3, 2007.

On May 31, 2007, the applicant filed another motion to reopen with the AAO. While the applicant identified both his initial application from June 2003 [SRC 03 187 54407] and his re-registration application from December 2004 [WAC 05 084 74021] on the Form I-290B, he submitted only one fee. Therefore, the AAO considers the motion as applying to the initial TPS application.

On motion, the applicant asserts that he has lived in the United States since 1998, and that he has answered all requests from CIS. The applicant submits copies of various documents dating from 1998 to 2006 as evidence of his residence and physical presence in the United States.

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;

¹ Prior to the AAO's decision, the CSC Director also issued a decision dismissing the motion on March 31, 2006, which had no legal effect because jurisdiction of the motion rested with the AAO.

- (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.

Honduran nationals applying for TPS 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 applicant filed his initial TPS application with CIS on June 23, 2003 – nearly four years after the initial registration period had closed.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he satisfied 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 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 applicant's motion to reopen is accompanied by documentation relating to his claim of continuous residence and continuous physical presence in the United States. 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). As such, this issue on which the underlying decision was based has not been overcome on motion.

The record also shows that the applicant attempted to enter the United States on October 2, 1999, and was questioned by inspection officials. In a sworn statement the applicant indicated that he had previously entered the United States on April 18, 1999, as a B-1 visitor for business, and returned to Honduras on September 5, 1999. The record shows that the applicant was removed from the United States on October 3, 1999. Thus, the record clearly establishes that the applicant was not continuously physically present in the United States from January 5, 1999 to the date he filed for TPS, 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).

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The AAO's previous decisions on the initial application, dated September 2, 2005 and May 3, 2007, are affirmed.