



U.S. Citizenship
and Immigration
Services

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ML

[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

Date: JUN 06 2007

[WAC 05 244 70566]

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant claims to be 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 because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant states that he is eligible for TPS because he is the child of an alien eligible for TPS.

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 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.

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 period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on May 31, 2005.

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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On July 20, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his late registration application and residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on August 21, 2006.

On appeal, the applicant states that his father is a TPS registrant and that he is eligible for a late initial registration application.

The record includes a copy of the applicant's birth certificate and copies of an Employment Authorization Document bearing the father's name. This is sufficient to establish that the applicant's father is an alien currently eligible for TPS, and thus that the applicant is eligible to file a late initial application. This portion of the director's decision is withdrawn.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on July 20, 2006, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. School attendance records for the applicant, dated December 13, 2004.
2. Certificate of Marriage from the New York State Department of Health, bearing the name of the applicant's parents and dated February 1, 2002.
3. Birth certificate of the applicant, indicating he was born in Honduras and listing the name of the applicant's father and mother.
4. Copy of the applicant's Honduran passport, which was issued in Honduras on December 14, 2005.
5. Letters, dated August 6, 2006, signed by [REDACTED] asserting that the applicant first arrived to the United States on August 10, 1999, and lived with his parents and sister at an address in Massachusetts.

The director concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant asserts that he has met the residence and continuous presence requirements for TPS. In support of his appeal he submits the following evidence:

1. Letters, dated August 30, 2006, and September 8, 2006, from The Greater Hudson Valley Family Health Center, stating the applicant is a patient there for an unspecified period and date, and that the father has been a patient there for four (unspecified) years.
2. Letter, dated September 5, 2006, from Gardnertown Fundamental Magnet School, stating the applicant is a student there.
3. Immunization record, with dates listed in 2003, 2004, 2005, 2006, listing the applicant's name and various immunizations.

The evidence submitted by the applicant is general in nature. The letter from Gardnertown school does not give the dates of the applicant's attendance, nor does the attendance record list the date the applicant arrived in the United States and became a resident. The marriage certificate submitted for the applicant's parents indicate that they were married in New York in 2002, but were listed as the applicant's parents on a birth certificate dated June 23, 1997. The relevance of these two documents on the applicant's eligibility is not clear.

In addition, it is noted that the applicant's passport was issued in Honduras on December 14, 2005, indicating that the applicant may not have been continuously present in the United States for the required period. In addition, the applicant's immunization record indicates that he received immunizations in Honduras up July 25, 2001. These facts raise serious doubts about the applicant's assertions of qualifying residence and presence.

While regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS as detailed in 8 C.F.R. §§ 244.2(a) through (e). The record indicates that the applicant has not been a resident and continuously present during the required periods. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds 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 this burden.

ORDER: The appeal is dismissed.