



U.S. Citizenship
and Immigration
Services

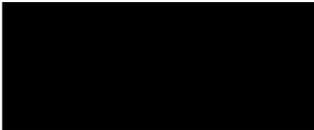
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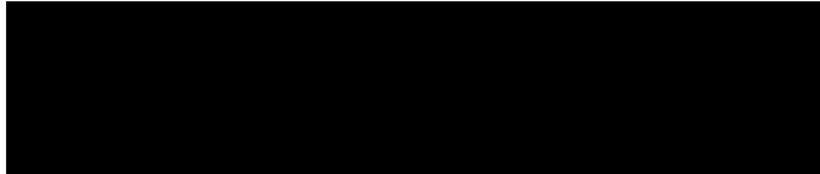
OFFICE: Vermont Service Center

DATE: JUN 12 2007

consolidated herein]
[EAC 03 058 55445]

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is 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 on the ground that the applicant failed to establish that he was eligible for late TPS registration.

On appeal, the applicant asserts that he meets one of the qualifying conditions for late TPS registration and submits some documentation in support of the claim.

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.

Honduran nationals applying for TPS must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence 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 TPS application with the Vermont Service Center on October 9, 2002 – more than three years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she satisfied at least one of the criteria enumerated 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 May 27, 2003, and again on June 9, 2003, 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), as well as documentary evidence of his continuous residence in the United States since December 30, 1998. The applicant responded on July 7, 2003 by submitting a copy of the Receipt Notice of his TPS application from the VSC and two letters from individuals who state that they have known the applicant in the United States since October and November 1998, respectively. On January 22, 2004, the VSC Director denied the application on the ground that the applicant had not submitted any evidence that he was eligible for late TPS registration.

The applicant filed a late appeal, which was accepted by the VSC as a motion to reopen/reconsider, accompanied by some documentation from the applicant's removal proceedings in 1999 and an asylum request filed by the applicant's mother in 1988 (which identified the applicant as a nine-year old son living in Honduras). On July 6, 2004, the VSC Director issued a decision affirming the previous decision. After noting the applicant's statement in one of the documents in his removal proceedings that he entered the United States in February 1999, which was after the requisite dates of December 30, 1998, and January 5, 1999, for continuous residence and physical presence in the United States, the director determined that the applicant had not submitted any evidence to show that he was eligible for late TPS registration under any of the criteria enumerated in 8 C.F.R. § 244.2(f)(2).

On appeal the applicant contends that he was in a valid nonimmigrant status because he was given 10 months to appear before an Immigration Judge and "when my qualifying condition expired I applied for TPS within the 60-day period of the expiration of my condition," as required under 8 C.F.R. § 244.2(f)(2) and (g). The applicant resubmits a copy of the "Notice of Hearing in Removal Proceedings" that was issued to him by the Immigration Court in Houston, Texas, on June 18, 1999.

The record includes a Form I-213, Record of Deportable/Inadmissible Alien, and a Form I-862, Notice to Appear, which confirm that the applicant entered the United States without inspection by wading across the Rio Grande near Eagle Pass, Texas, on February 10, 1999, and was apprehended by the U.S. Border Patrol. The applicant was then in removal proceedings for the next year and a half. When the applicant failed to appear at a hearing scheduled on July 7, 2000, an Immigration Judge in San Antonio, Texas, ordered that the applicant be removed from the United States. A Warrant of Removal was issued by the CIS District Director in San Antonio, Texas, on July 31, 2000, which remains outstanding.

Thus, at the time of the initial registration period of January 5, 1999 – August 20, 1999, the applicant was not in valid nonimmigrant status and did not meet any of the other qualifying conditions for late registration enumerated at 8 C.F.R. § 244.2(f)(2). Moreover, even if the applicant had been in valid nonimmigrant status until the end of his removal proceedings in July 2000, he did not file his TPS application until October 9, 2002 – more than two years after the conclusion of his removal proceedings and long after the 60-day window provided in 8 C.F.R. § 244.2(g). Accordingly, the director's denial of the application on the ground that the applicant failed to establish his eligibility for late TPS registration will be affirmed.

Beyond the decision of the director, the applicant has not established that he 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). Though the applicant stated on his Form I-821 that he entered the United States in October 1998, the only evidence thereof in the record are the two letters the applicant submitted in July 2003 – one dated June 19, 2003, from an employer in Chelsea, Massachusetts, who stated that the applicant had been working for his company since October 1998, and the other dated May 23, 1999, from a church pastor who stated that the applicant had been living in Chelsea, Massachusetts since November 1988. The letters are not supplemented by any other corroborating documentation. If the applicant has lived in the United States since October 1998, as he claims, it is reasonable to expect that he would have some contemporaneous documentation. Letters from acquaintances are not, by themselves, persuasive evidence of continuous residence or physical presence in the United States.

Furthermore, the applicant's assertion that he entered the United States in October 1998 is inconsistent with the previously discussed documentation confirming that the applicant was apprehended entering the United States in February 1999, which was after the requisite dates of December 30, 1998, and January 5, 1999, for continuous residence and continuous physical presence in the United States. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence reflects on the reliability of the remaining evidence. *See id.*

The AAO determines that the applicant has failed to submit sufficient documentary evidence to satisfy his burden of proof that he meets the continuous U.S. residence and physical presence requirements for TPS applicants from Honduras. Accordingly, the application must also be denied on these grounds.

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.