



U.S. Citizenship
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Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 27 2007

[WAC 05 105 76778]

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:



PUBLIC COPY

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
Robert P. Wiemann, Chief *for*
Administrative Appeals Office

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

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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director also determined that the applicant failed to establish his nationality and identity. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the denial of the TPS application was incorrect. The applicant also submits additional evidence in an attempt to establish his nationality and identity, his continuous residence and physical presence in the United States during the qualifying period and his eligibility for late registration.

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 as 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 term *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 term *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 to August 20, 1999. The record shows that the applicant filed his initial TPS application on January 13, 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 proceeding 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 from January 5, 1999 through August 20, 1999, he fell within one of the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On February 5, 2006, the applicant was provided the opportunity 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 nationality and identity, his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States from January 5, 1999 to the date of filing the

application. In addition, the applicant was requested to provide two photographs. The applicant failed to respond to the notice. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the decision to deny the TPS application was incorrect. According to counsel, the applicant and his mother were unsure of what to do in response to the notice requesting additional evidence and as a result of their inaction, the applicant was denied. The applicant also provides:

1. A copy of the applicant's birth certificate, with English translation.
2. A statement from [REDACTED] the applicant's mother.
3. A copy of the applicant's mother's marriage license.
4. Copies of the mother's employment authorization cards from August 23, 1999 to July 5, 2006 and a copy of the mother's current State of Louisiana Driver's License.

The applicant's mother's file (under alien registration number [REDACTED] was also examined; it indicates that she was approved for TPS on April 8, 2000. This evidence establishes that the applicant is eligible for late initial TPS registration. Consequently, the applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(f)(2).

Therefore, this basis of the director's decision will be withdrawn.

The remaining issues in this proceeding are whether the applicant has established his nationality and identity, 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 February 5, 2006 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond to the notice.

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 furnished:

5. A copy of the applicant's Honduran passport.
6. Copies of the applicant's high school identification cards for 2004-2005 and 2005-2006 school years.
7. Statements from: [REDACTED] Principal of St. John's Elementary and Middle School, Plaquemine, Louisiana; [REDACTED] Membership Assistant, Istrouma Baptist Church, [REDACTED] Louisiana; [REDACTED] S.C., Principal; and, [REDACTED] Guidance Counselor of Catholic High School, Baton Rouge, Louisiana; [REDACTED] Pediatric Associates, Plaquemine, Louisiana including a summary of the applicant's medical records; and, [REDACTED]

8. Copies of the applicant's school records from kindergarten to seventh grade and ninth grade, the applicant's high school transcript, honor certificates from 2003-2004 and 2005-2006 school years at Catholic High School, student council certificates from 2005-2006 school year at Catholic High School.

The passport and high school identification cards establish the applicant's nationality and identity. [REDACTED] states that the applicant attended St. John Elementary and Middle School from September 14, 1994 until May 2003. [REDACTED] states that the applicant has attended Catholic High School since August 2003. [REDACTED] states that the applicant has been her patient since September 9, 1994. Coupled with school and medical records, these documents establish that the applicant continuously resided in the United States since December 30, 1998. Consequently, the applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). The applicant also submits the requested photographs.

Therefore, these bases for the director's decision also will be withdrawn, the application shall be approved and the appeal shall be sustained.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.