

**PUBLIC COPY**

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

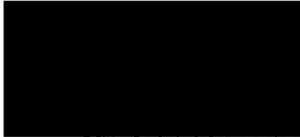


U.S. Citizenship  
and Immigration  
Services



M1

FILE:



OFFICE: TEXAS SERVICE CENTER

DATE: **MAR 29 2007**

[SRC 04 085 55095]

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*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is a native and citizen of Honduras who is applying for 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.

On appeal, the applicant submits a statement and additional evidence.

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 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 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 time period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on February 3, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he fell within 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 late initial registration. 8 C.F.R. § 244.2(g).

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On February 12, 2004, 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 physical presence in the United States during the requisite period. In addition, the applicant was requested to submit a photocopy of his current driver's license and an original birth certificate, with English translation. The applicant, in response, provided documentation relating only to his 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 April 12, 2004.

On appeal, the applicant asks for "the opportunity to be legal in this country in which with a lot of difficulty [he has] lived here without having a better opportunity in employment." The applicant states that he has lived in the United States since "1998" and has evidence to prove that. He states that he would not like to lose his work permit. Further, the applicant states that he did not apply during the appointed dates because he was afraid that he would be deported. In support of the appeal, the applicant submits additional documentation including: generic receipts dated in 1999; a Florida Power & Light billing statement dated July 13, 1999; and, meter billing statements dated in 1999. The applicant also resubmits his Honduran identification card issued on October 19, 1997, and AT&T billing statements.

The applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his application for Temporary Protected Status within the initial registration period. It is noted that on the Form I-765, Application for Employment Authorization, the applicant indicated both his manner of entry into the United States and his current immigration status as entry without inspection (EWI), while on the Form I-821, Application for Temporary Protected Status, the applicant indicated that he entered the United States without inspection, and listed his current immigration status as an F-1, nonimmigrant student. The applicant has not submitted sufficient evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient credible evidence to establish his qualifying continuous residence and continuous physical presence during the requisite time periods. The Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant was apprehended by the United States Border Patrol on or about July 26, 2001, while attempting entry into the United States at or near Hidalgo, Texas, and was subsequently placed in removal proceedings under the

name of [REDACTED] record number [REDACTED]. The applicant's apprehension on July 26, 2001, indicates that he has not met the requirements of continuous residence since December 30, 1998, and continuous physical presence since January 15, 1999, in the United States. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). In addition, it is noted that the evidence submitted by the applicant to establish his continuous residence and continuous physical presence appears to have been altered. This evidence includes billing statements from Florida Power & Light, AT&T, meter billing statements, and a bill from Pacific Gas & Electric, Oakland, California, dated July 1998, for services allegedly provided to the applicant at his Florida address. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the application must also be denied for these reasons.

Review of the record of proceedings under [REDACTED] reflects that a Warrant of Removal/Deportation was issued at Harlingen, Texas, on February 8, 2002, following the final order of removal *in absentia* issued on January 18, 2002, by the Immigration Judge, Harlingen, Texas. The applicant failed to depart under that order.

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 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. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.