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**U.S. Citizenship  
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FILE: [REDACTED]  
[EAC 06 214 75995]

OFFICE: Vermont Service Center

Date: **NOV 16 2007**

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont 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 asserts he is eligible for late registration and asks that CIS approve his application.

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 January 5, 2009, 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 2, 2006.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 31, 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, as well as the final disposition for any criminal charges on his arrest record. The applicant, in response, provided documentation relating 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 January 12, 2007. On appeal, the applicant asks that CIS approve his application.

The applicant has not articulated any basis of eligibility for late registration, despite the director specifically requesting the initially required evidence necessary to establish prima facie eligibility. The applicant submitted evidence in an attempt to establish his qualifying residence and 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. 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). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

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 31, 2006, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted an employment letter, paystubs, affidavits, handwritten receipts and a police report.

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, noting a significant gap in credible evidence for the year 1998 and 1999, and denied the application.

On appeal, the applicant asks that CIS approve his application.

As noted by the director there is a significant gap in the applicant's evidence concerning 1998 and 1999. The evidence relating to this period at issue includes the following:

1. A letter dated April 12, 2006, signed by [REDACTED] of Groundskeeper, Outside Solutions, located in Arizona, Nevada and New Mexico, asserting the applicant was hired December 1, 1997, and fired October 2, 1998.

The letter at No. 1 above is general in nature and not probative of the applicant's continuous physical residence and presence. The letter does not list the source of the information, and is not supported by any other corroborative evidence, and was written 8 years after the period in question. It is also noted that the document has a misaligned and inconsistent font size in the date, raising questions about the authenticity of the document. The employment affidavit from Groundskeeper has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the years 1998 and 1999, during the required period. 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 also be affirmed.

Beyond the decision of the director, the next issue in this matter is the applicant's failure to provide information necessary for the adjudication of his petition.

The applicant was requested on July 31, 2006, to provide the final disposition for arrests revealed by an FBI background check. In response the applicant has provided a copy of the police report, and print outs of court records from a municipal court in Arizona.

The record reveals the following charges:

1. On March 19, 1999, the applicant was arrested by the Phoenix Police Department for a felony Disorderly Conduct for the Reckless Discharge of a weapon.
2. On May 26, 1997, the applicant was cited for Fin Resp in Phoenix, Arizona. Charge No. [REDACTED]
3. On May 26, 1997, the applicant was cited for No License in Phoenix, Arizona. Charge No. [REDACTED]
4. On May 26, 1997, the applicant was cited for No Identification in Phoenix, Arizona. Charge No. [REDACTED]
5. On June 20, 1997, the applicant was cited for an undetermined charge in Phoenix, Arizona.

The director incorrectly associated a New York state court document reporting the dismissal of a charge with the charge listed at No. 1 above, which occurred in Phoenix, Arizona. This document is not related to the charge listed at No. 1, and the applicant has still not provided a copy of the actual final court disposition of the charge. Without the final court dispositions revealing the nature and status of any and all charges on the applicant's criminal record CIS cannot determine the applicant's eligibility. Thus, the actual court dispositions for the charges listed above are a material line of inquiry.

The applicant has failed to provide any evidence revealing the actual final court dispositions of any and all arrests on his criminal record, under his name or any alias used. The applicant is ineligible for Temporary Protected Status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for this reason 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.