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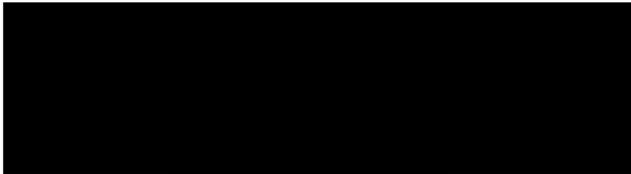
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: California Service Center

Date:

SEP 10 2007

[WAC 05 062 75267]

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 California Service Center. 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, California Service Center (CSC). A subsequent appeal was dismissed by the Director, now Chief, Administrative Appeals Office (AAO). A motion to reopen was also dismissed by the AAO. The matter is now before the AAO on a subsequent motion to reopen. The current motion to reopen will be dismissed.

The applicant claims to be 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.

On May 28, 2002, the applicant filed his initial application for TPS under receipt number SRC 02 186 53021. The Texas Service Center (TSC) director denied that application on September 13, 2002, due to abandonment. The applicant filed an appeal on October 7, 2002, which was rejected by the AAO on February 27, 2003. The applicant filed a motion to reopen on May 1, 2003, which was denied by the TSC director on January 20, 2005. The applicant filed another motion to reopen on February 18, 2005, which was denied by the TSC director.

The director denied the current application on May 11, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

A subsequent appeal from the director's decision was dismissed on February 28, 2006, after the AAO also concluded that the applicant was not eligible to re-register for TPS. The AAO also determined that the applicant failed to show that the current application should be accepted as a late initial registration. On March 27, 2006, the applicant submitted a motion to reopen. That motion to reopen was dismissed by the AAO on March 29, 2007. The AAO concluded that the underlying decision had not been overcome. The AAO also concluded that the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States; and, therefore, the application was also denied for those reasons.

On the current motion to reopen, the applicant asserts that he has lived in the United States since 1998, and that he has answered all the requests for documents that he has received from Citizenship and Immigration Services (CIS). The applicant also submits copies of some evidence in an attempt to establish his eligibility TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;

- (e) Is not ineligible under § 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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed the current application with CIS, on December 1, 2004, 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.

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 applicant states, in his motion, that he entered the United States in 1998, and that he has answered all requests from CIS. The applicant also submits the following evidence: copies of several money transfer receipts dated June 30, 2006, to March 2, 2007; copies of his Internal Revenue Service (IRS), Form W-2, Wage and Tax Statements for the years 2003, 2005, and 2006; copies of correspondences from the IRS dated June 16, 2004, June 28, 2004, April 10, 2004, and September 6, 2004; copies of his IRS U.S. Individual Income Tax Returns for the years: 2000 and 2001; copies of his utility bill dated March 28, 2007; copy of his Comcast bill dated March 28, 2007; a copy of a Management Agreement dated April 10, 2007; and copies of his Employment Authorization Cards (EAD's) valid from September 5, 2003 to July 5, 2006.

The applicant's motion to reopen consists of documentation relating to his claim of continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States. 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). As such, this issue on which the underlying decision was based has not been overcome on motion.

In addition, the Chief of the AAO concluded that the applicant did not establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant submits evidence that post-dates the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States. The applicant has not submitted sufficient credible evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2 (b) and (c). Consequently, this issue on which the underlying decision was based also has not been overcome on motion.

It is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. 8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

- (a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful

efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification;  
and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant has provided a copy of his birth certificate, with an English translation, as evidence of his identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide photo identification. Therefore, the application must also be denied for this reason.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

**ORDER:** The motion to reopen is dismissed. The previous decision of the AAO dated March 29, 2007, is affirmed.