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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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M₁

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: SEP 13 2007

[EAC 06 278 71253]

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 "Robert P. 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 on appeal. The appeal will be dismissed.

The applicant claims to be 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 he was eligible for late registration. The director also denied the application because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States. In addition, the director denied the application because the applicant failed to provide his identity document bearing a photograph.

On appeal, the applicant asserts his claim of eligibility for TPS and submits some evidence in an attempt to support his 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, 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.

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 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).

On November 21, 2006, the applicant was requested to submit evidence to establish 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 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 was also requested to submit evidence to establish his identity.

In response, the applicant submitted the following: copies of the front of an envelope postmarked January 8, 2007, from CIS; a copy of a birth certificate along with an English translation; an affidavit dated December 8, 2006, from [REDACTED] stating that the applicant resided in his home at [REDACTED] in Miami, Florida, since his arrival in 1998; an affidavit dated December 12, 2006, from [REDACTED] stating that she has known the applicant for the past seven years; an affidavit dated December 14, 2006, from [REDACTED] stating that she has known the applicant since 2000; a church letter dated December 5, 2006,

from [REDACTED] stating that he has known the applicant for eight years in Honduras and the applicant has been a member of the church since his arrival in November 1998; a copy of receipts from [REDACTED] with illegible dates; a copy of a receipt dated October 3, 2005, from 3M Communications, Incorporated; a copy of a Pronto Envios money transfer receipt dated February 1, 2006; a copy of a receipt dated October 2, 2003, from O & E Jewelry Corporation; a copy of an Office Depot receipt; and copies of his Internal Revenue Service (IRS) U.S. Individual Income Tax Returns for the years: 1998 to 2005.

The director determined that the evidence submitted was insufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. The director also determined that the applicant failed to establish his eligibility for TPS late registration. In addition, the director determined that the applicant failed to provide a photo identity document. Therefore, the director denied the application on February 20, 2007. The director also noted in his decision to deny that the evidence contained discrepancies in the applicant's claimed residences in the United States.

On appeal, the applicant states that he had previously applied for TPS during the initial registration period through an agency; however, he cannot locate that agency in order to obtain copies of his application. In addition, the applicant claims that he has lived in the United States since 1998. The applicant also provides copies of the previously submitted documentation.

The first issue in this proceeding is whether the applicant is eligible for late registration.

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 CIS, on July 5, 2006, 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 applicant submits some evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. 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 decision to deny the application for TPS late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his qualifying continuous residence and continuous physical presence in the United States.

The statement from the affiant, [REDACTED], indicates that the applicant resided at [REDACTED], and [REDACTED] in Miami, Florida. However, the applicant claimed on his IRS U.S. Individual Tax Returns that he resided at [REDACTED] in Miami, Florida. There appear to be inconsistencies in the statements from [REDACTED] and the applicant's claimed address on his tax documents. Therefore, the reliability of [REDACTED] statements is questionable. Furthermore, the tax

documents do not reflect if they were timely filed with the IRS. The tax documents also do not indicate that the applicant was in the United States and do not provide the actual dates of employment. In addition, the statements from [REDACTED] and [REDACTED] are not supported by creditable evidence at the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States. The Pronto Envios money transfer, 3M Communications, Incorporated, O & E Jewelry, as well as the Office Depot receipt post-date the beginning of the qualifying time periods for Honduran TPS.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant has not submitted sufficient credible evidence to establish his continuous residence in the United States since December 30, 1998, and 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, the director's decision to deny the application for these reasons must also be affirmed.

The third issue in these proceedings regards the applicant's identity.

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 record contains a copy of the applicant's Honduran birth certificate. However, the applicant has not provided sufficient evidence to establish that he is a national or citizen of Honduras pursuant to 8 C.F.R. § 244.9. Consequently, the director's conclusion that the applicant had failed to provide evidence of his identity 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 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.