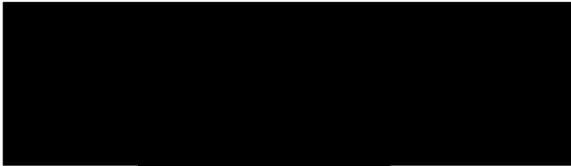




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 06 126 70168]

Office: California Service Center

Date: SEP 25 2007

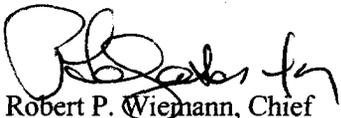
IN RE: Applicant: [REDACTED]

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 denied the current application on August 21, 2006, because the applicant failed to establish his eligibility for TPS 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 during the requisite time periods. On September 21, 2006, the applicant filed an appeal, which was dismissed on April 30, 2007, after the AAO concluded that the applicant failed to establish his eligibility for TPS late registration as well as his qualifying continuous residence and continuous physical presence in the United States. The AAO also determined that the applicant did not submit a copy of his birth certificate with an English translation.

On motion to reopen, the applicant asserts that he has lived in the United States since 1997, and that he had returned to Honduras because his grandmother was ill. The applicant also submits copies of some evidence in an attempt to establish his eligibility for 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 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).

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 his application with CIS on January 31, 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 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 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 arrived the United States in 1997. The applicant also states that he had returned to Honduras because his grandmother became ill on November 24, 2004. The applicant also submits a

copy of his Honduran birth certificate with an English translation as well as an untranslated letter from the [REDACTED]. In addition, the applicant submits copies of the following documentation: three Western Union money transfer receipts dated August 22, 2005, September 10, 2005, and December 19, 2005; a letter from [REDACTED] dated April 3, 2006; a hand-written receipt dated October 10, 2005, from [REDACTED]; a statement from [REDACTED] reflecting coverage dated March 7, 2006; a letter dated December 12, 2006, from [REDACTED]; a statement of services dated April 25, 2006, from [REDACTED]; a statement dated September 22, 2005; a hand-written rent receipt dated November 1, 2006; and various cash register and money order receipts that do not bear any name.

The applicant provides a copy of his Honduran birth certificate with an English translation. The record of proceedings also contains a copy of the applicant's Honduran passport. Therefore, the applicant has provided sufficient evidence to establish his nationality and identity.

The second issued in this proceeding concerns the applicant's eligibility for TPS late registration. 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. 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). As such, this issue on which the underlying decision was based has not been overcome on motion.

The third issued in this proceeding is whether the applicant has established his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant along with his motion submits documentation which post-dates the requisite time periods for continuous residence and continuous physical presence in the United States. The remainder of the evidence does not bear the applicant's name; therefore, provides little, if any, evidentiary weight in these proceedings. 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 evidence to substantiate his claim that he had resided in the United States since 1997.

Moreover, a review of the record of proceedings reflects that the applicant was apprehended by the United States Border Patrol on December 16, 2004, near Hidalgo, Texas. The record also reveals that the applicant stated to the agents that he had left Honduras on December 1, 2004, and entered Mexico illegally on December 4, 2004, en route to the United States. Therefore, the applicant could not have met the requirements that he had continuously resided in the United States since December 30, 1998, and he had been continuously physically present in the United States since January 5, 1999. The applicant has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). As such, this issue on which the underlying decision was based has also not been overcome on motion.

It is noted that the applicant was granted voluntary departure, with an alternate order of deportation, on June 30, 2005, by an Immigration Judge in Miami, Florida, based upon his apprehension near Hidalgo, Texas, on December 16, 2004.

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 April 30, 2007, is affirmed.