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U.S. Citizenship
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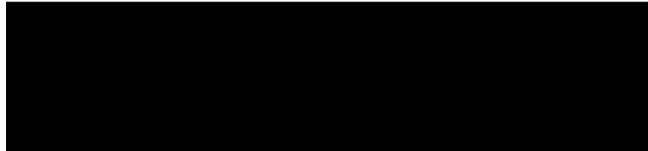
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OFFICE: VERMONT SERVICE CENTER

Date: JAN 10 2008

INRE:

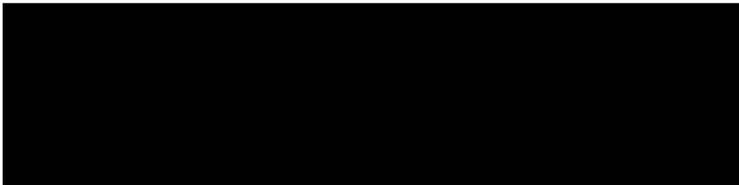
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.c. § 1254

ON BEHALF OF APPLICANT:



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, 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 provides documents in an attempt to establish his nationality, continuous residence and physical presence in the United States. The applicant claims that he provided a change of address prior to the issuance of the Notice of Intent to Deny.

Section 244(c) of the Act, and the related regulations in 8 C.P.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.P.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. The designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2009, 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 on June 14, 1999, the applicant filed a TPS application under Citizenship and Immigration Services (CIS) receipt number EAC9920750337, and was issued alien registration number [REDACTED]. The application was granted on May 8, 2000. The record contains no evidence that the applicant filed a re-registration application for TPS. On April 30, 2001, a Form 1-130, Petition for Alien Relative, was filed on behalf of the applicant. The Form 1-130 was approved on November 30, 2001. On May 22, 2002, the applicant filed a Form 1-485, Application for Permanent Residence. On December 29, 2005, the Form 1-485 application was denied due to the applicant's criminal history and his misrepresentation of a material fact. The District Director, New York, in denying the application, also found the applicant inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. On May 1, 2006, the applicant properly filed the current TPS application and indicated that it was his first application.

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 this current 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 December 6, 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 identity and his **qualifying** continuous residence and continuous physical presence in the United States. The notice, which was sent to counsel's address of record, was returned by the post office as undeliverable.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on January 11, 2007.

On appeal, the applicant provides a copy of his Honduran passport along with evidence in an attempt to establish his continuous residence and physical presence in the United States during the requisite periods.

The applicant, however, has not met the threshold requirement for late registration as neither the Form I-130 nor Form I-485 was pending during the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the other 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.

The applicant was requested on December 6, 2006, to submit evidence establishing his **qualifying** continuous residence and continuous physical presence in the United States. The applicant was also requested to submit the court dispositions for all arrests including his March 10, 2000, arrest by the New York Police Department for operating a motor vehicle while impaired by alcohol. As noted above, the notice, which was sent to counsel's address of record, was returned by the post office as undeliverable.

The director concluded that the applicant had failed to establish his identity and his **qualifying** continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

In an attempt to establish his continuous residence and physical presence in the United States, the applicant, on appeal, submits: 1) his baptismal certificate with English translation; 2) a document from TACA International Airlines regarding the applicant's flight on May 5, 1995 to Miami, Florida; 3) an employment letter dated June 21, 1996, from a representative of Airway Cleaners, Inc. in Jamaica, New York, who attested to the applicant's employment as a general cleaner since June 1995; 4) a certificate dated July 11, 1996, and a letter of completion dated July 15, 1996, from International Bartenders and Waiters Association; 5) his marriage certificate issued on October 9, 1998; 6) his daughter's February 10, 1995 birth certificate; 7) a printout from the Social Security Administration dated August 28, 2006, reflecting his earnings since 2000; 8) copies of his employment authorization cards; and 9) a copy of his New York driver license issued on December 7, 2006.

The evidence submitted with the applicant's initial TPS application filed on June 14, 1999, consisted of: 1) receipts dated June 5, 1996, and April 7, 1999, from Electronic Outlet Stores in New York; 2) envelopes postmarked February 29, 1996, December 23, 1996, and April 28, 1998, to the applicant's New York address; 3) earnings statements for the periods ending December 26, 1995, December 22 and 29, 1996, and

April 27, 1997; 4) a passenger ticket dated February 1, 1995, from TACA International Airlines; and 5) several receipts issued in 1997 and 1999 that do not list the applicant's name.

A review of all the documents submitted establishes the applicant's residence in the United States from February 1995 to October 1998 and since 2000. Except for the receipt dated April 7, 1999, which is addressed to [REDACTED], no evidence has been submitted to establish the applicant's continuous residence and physical presence during the initial registration period. 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 TPS on these grounds will also be affirmed.

Beyond the decision of the director the applicant is ineligible for TPS due to his misdemeanor convictions. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *affd.* 345 F.3d 683 (9th Cir. 2003); *see also Dar v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

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).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

The record reflects the following offenses in the state of New York:

1. On March 10, 2000, the applicant was arrested under the alias [REDACTED] for violating section 1192.3, operating a motor vehicle while intoxicated; section 1192.2, operating a motor vehicle without a license; and section 509.1, aggravated unlicensed operation of a motor vehicle. On April 25, 2000, the applicant pled guilty to violating section 1192.1, operating a motor vehicle while ability impaired. Docket no. [REDACTED]
2. On June 22, 2004, the applicant was arrested to violating section 140.10, criminal trespass. The applicant subsequently pled guilty to violating section 140.05, trespassing. Docket no. [REDACTED] It is noted that the court disposition for this conviction was submitted at the time the Form I-485 application was filed.

In denying the Form I-485 application, the applicant was found to be inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. Such grounds of inadmissibility, however, may be waived in relation to his TPS application pursuant to section 244(c)(2) of the Act; 8 C.F.R. § 244.3(b). The

¹ Evidence in the record indicates the applicant entered the United States on February 6, 1995, with a C-I visa, a non-immigrant in transit.

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applicant has not been offered an opportunity to apply for a waiver; therefore, the applicant's inadmissibility will not be discussed at this time.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(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 IPS 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.