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**U.S. Citizenship
and Immigration
Services**

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FILE:



[LIN 02 231 51807]

Office: NEBRASKA SERVICE CENTER

Date: **JAN 22 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: 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center (NSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal 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 application on the grounds that the applicant failed to establish his eligibility for late registration, his continuous residence and physical presence in the United States for the requisite time periods, and his identity/nationality in the form of a birth certificate or passport.

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, 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.P.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.P.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.P.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.

Honduran nationals applying for TPS 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 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). See 8 c.P.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. See 8 c.P.R. § 244.9(b).

The record of proceedings shows that the applicant – who claims to have entered the United States in November 1994 – filed his first Ponn 1-821, Application for Temporary Protected Status, at the NSC during the initial registration period on February 22, 1999 [LIN 99 12951863]. That application was denied due to abandonment on October 24, 2000, after the applicant failed to appear as scheduled for a fingerprint appointment.

The applicant filed a second Ponn 1-821, which he identified as another initial application for TPS, at the NSC on June 27, 2002 [LIN 02 231 51807] - nearly three years after the close of the initial registration period. This time the applicant provided the requisite fingerprints as scheduled. On December 9, 2002, the director requested the applicant to submit evidence establishing his eligibility for late registration under 8 c.P.R. § 244.2(f)(2); his date of entry into the United States; his continuous residence in the United States since December 30, 1998; his continuous physical presence in the United States since January 5, 1999; and his identity/nationality in the form of a birth certificate or passport.

The applicant did not respond to the request for evidence. On February 24, 2003, therefore, the director denied the application on the grounds discussed in the request for evidence. The applicant filed a timely appeal.

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 met at least one of the provisions described in 8 CF.R. § 244.2(f)(2) above.

On appeal, the applicant submits photocopies of the following documentation, most of which relates to his residence and physical presence in the United States: three earnings statements from an unidentified employer dated October 18, 1998, November 15, 1998, and September 19, 1999; three earnings statements from American Hospitality Concepts for pay periods ending on November 28, 1999, October 31, 1999, and January 2, 2000; an Employment Authorization card valid from July 6, 2000 to July 5, 2001; his marriage certificate showing that he was married in Balsam Lake, Wisconsin, on April 16, 2002; and his Honduran birth certificate with an English translation.

CIS records confirm the applicant's assertion that he entered the United States in November 1994, and the applicant has provided one of the national identity documents requested by the director. Accordingly, those two grounds for denial have been overcome.

As for the evidence of the applicant's residence and physical presence in the United States, the earnings statements from American Hospitality Concepts and the marriage certificate post-date the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States. The three other earnings statements submitted by the applicant do not provide the name or address of the employer. While the documentation submitted on appeal confirms that the applicant was in the United States at various times between 1998 and 2002, there are significant gaps in the dates. Moreover, the earnings statements and marriage certificate are not supplemented by any of the other types of documentation suggested in the request for evidence issued on December 9, 2002. If the applicant has lived in the United States since 1994, as he states, it is reasonable to expect that he would have more contemporaneous documentation demonstrating his residence and physical presence over the years.

The AAO concludes that the applicant has not submitted sufficient evidence to establish his continuous physical presence in the United States since January 5, 1999, and his continuous residence in the United States since December 30, 1998, as required for Honduran nationals under 8 CP.R. § 244.2 (b) and (c). Accordingly, the director's denial of the application for TPS on these grounds will be affirmed.

Furthermore, the applicant has not submitted any evidence to establish that he meets any of the criteria for late registration set forth in 8 CF.R. § 244.2(f)(2) with respect to the TPS application he filed on June 27, 2002. Accordingly, the director's denial of the application on this ground will also 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.