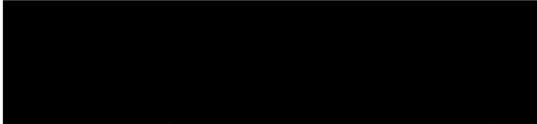


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FILE:



OFFICE: Vermont Service Center

Date:

JAN 29 2008

[EAC 06 259 71012]

IN RE:

Applicant:



APPLICATION:

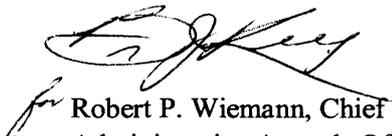
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 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, 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, and that he had failed to submit evidence to establish his nationality and identity.

On appeal, the applicant states that he wants to be able to work legally in the United States so that he can provide for his family.

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 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.F.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 the applicant filed this application with Citizenship and Immigration Services (CIS) on June 5, 2006.

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 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 fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On November 20, 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 qualifying continuous residence and continuous physical presence in the United States, as well as his national identity. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on January 30, 2007.

On appeal, the applicant asks that CIS reconsider his application and approve his case.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence 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). 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.

As stated above, the applicant was requested on November 20, 2006 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. However, the applicant failed to respond to the director's request.

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

On appeal, the applicant reasserts his eligibility for TPS and submits the following documentation:

1. An affidavit dated February 18, 2007 from [REDACTED] attesting to have known the applicant since 1998;
2. An affidavit dated February 18, 2007 from [REDACTED] stating that he has known the applicant since 1998 and that the applicant has lived in his house for two (2) years;
3. An affidavit dated February 18, 2007 from [REDACTED] stating that he has known the applicant since 1998 and that he has worked with the applicant since 1999; and,
4. A letter dated December 8, 2006 from [REDACTED] stating that the applicant has been employed by [REDACTED] since January 1, 1998 and that he is paid in cash.

The employment affidavit from [REDACTED] shows a discrepancy between the stated time of employment and the time of the applicant's presence in the United States. On his Form I-821, Application for Temporary Protected Status, the applicant indicated his date of entry into the United States as June 1998. According to the employment letter dated December 8, 2006, the applicant was employed at [REDACTED], since January 1, 1998. The applicant could not have been working in the United States in January 1998 as he indicated on the TPS application that he did not enter the United States until June 1998. The applicant did not provide any evidence to explain this discrepancy. Thus, the employment affidavit has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. Such letters from an employer must include:

- A. Aliens address(es) at the time of employment;
- B. Exact period(s) of employment;
- C. Period(s) of layoff; and
- D. Duties with the company.

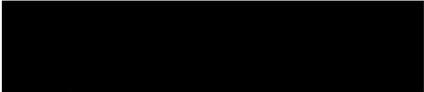
The statements from [REDACTED] and [REDACTED] regarding the applicant's claimed presence in the United States since June 1998 are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. 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.

Finally, the applicant has failed to establish his national identity. Section 8 C.F.R. § 244.9 requires applicants to submit all information requested in the instruction on the forms and as may be requested by CIS. Acceptable evidence of nationality includes:

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

It is also noted that the Director, in his January 30, 2007 decision, erred in stating that the applicant had failed to establish that he is a national of El Salvador instead of a national of Honduras as claimed on his TPS application. However, in this case, the applicant has only submitted a copy of his Honduran birth certificate and an English translation and not the required photo identification. The evidence submitted is not sufficient to establish the applicant's national identity. Therefore, the director's decision to deny the application on this ground is also 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.