



U.S. Citizenship
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FILE: [REDACTED]
[WAC 05 069 75523]

Office: CALIFORNIA SERVICE CENTER

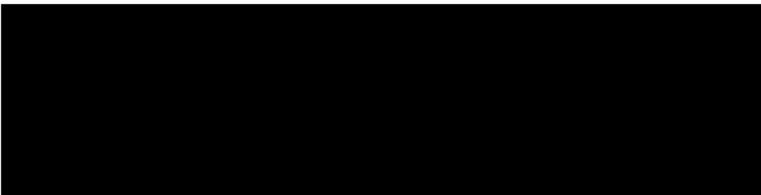
Date: **JAN 29 2008**

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:



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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director also determined that the applicant failed to establish his nationality and identity. The director, therefore, denied the application.

On appeal, the applicant states that he has lived in the United States since February 1998 and did submit a response to the Notice for Intent to Deny.

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 as designated by the Attorney General is eligible for temporary protected status 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.

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.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed this application on December 8, 2004.

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 proceeding 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 from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On March 23, 2006, the applicant was provided the opportunity 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 nationality and identity, his continuous residence in the United States since December 30, 1998 and his continuous physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant failed to respond to the notice. Therefore, the director denied the application.

On appeal, the applicant states that he entered the United States in February 1998 and has registered for TPS since 1999 and his first work permit was granted on September 27, 1999. According to the applicant, he submitted a response to the Notice of Intent to Deny that was received on April 6, 2006. The applicant also claims that his Alien Number was changed from [REDACTED] to [REDACTED]. The applicant also submits evidence in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application 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 failed to establish his eligibility for late registration will be affirmed.

The remaining issues in this proceeding are 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, and whether the applicant has established his nationality and identity.

As stated above, the applicant was requested on March 23, 2006 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The director determined that the applicant failed to respond to the notice. However, the record indicates that the applicant did submit evidence in response to the notice. Specifically, the applicant submitted:

1. Copies of a receipt for a Social Security Card dated October 4, 1999, and a State of Florida Marriage Record dated February 10, 2006.
2. Copies of a check to the applicant dated November 29, 1999, and pay stubs dated January 9, 2004, and February 13, 2004.
3. Copies of money transfer receipts dated June 20, 1998, July 29, 1998, August 9, 1998, October 12, 1999, February 12, 2005, and August 5, 2006.
4. Copies of a letter from Worldwide Real Estate & Prop MGM dated February 13, 2001, January 15, 2002 and 2000 and 2003 tax documents.

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

5. Copies of a Honduran Identification Card, passport and birth certificate with English translation.
6. A copy of a receipt for a Social Security card dated October 4, 1999, and a copy of a check from Everything Warehouse dated November 29, 1999.
7. A copy of an application to marry dated February 10, 2006.
8. Copies of undated bank statements.
9. Copies of money transfer receipts dated March 25, 1998, April 25, 1998, May 10, 1998, June 20, 1998, July 29, 1998, September 2, 1998, August 6, 1998, December 19, 1998, October 12, 1999, February 12, 2005, and August 5, 2006.

10. Copies of tax documents for 2000, 2001, and 2003 and a copy of an Indemnity Bond for Lost Refund Anticipation Loan Check dated November 6, 2004.

The Honduran documents establish the applicant's nationality and identity. Therefore, this basis for the director's decision will be withdrawn. The money transfer receipts indicate the applicant was present in the United States on those dates. Similarly, the tax documents indicate the applicant was present in the United States in 2000, 2001 and 2003. However, these documents cannot establish the applicant's continuous residence since December 30, 1998, and continuous physical presence from January 5, 1999 to the filing date of the TPS application.

The applicant states that his first employment authorization was granted on September 27, 1999. However, while the applicant did submit a TPS application on May 20, 1999, there is nothing in the record to indicate that it was approved. Furthermore, CIS records indicate that the Alien Number [REDACTED] is assigned to another individual. The record indicates the applicant was incorrectly assigned this Alien Number, and an employment authorization card was issued to him based on this Alien Number. However, this error was corrected and the applicant was subsequently assigned his current Alien Number [REDACTED].

As discussed above, the applicant has established his nationality and identity. Therefore, this basis of the director's decision must be withdrawn.

The applicant has not submitted sufficient evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. He 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 temporary protected status on these grounds 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 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.