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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: Vermont Service Center

DATE: NOV 03 2008

[EAC 06 259 76573]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (AAO), 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 record reveals that the applicant filed an initial TPS application on July 8, 2003, under Citizenship and Immigration Services (CIS) receipt number EAC 03 213 51308. The VSC director denied that application on October 16, 2003, after he determined that the applicant has failed to establish his eligibility for late initial registration. On November 17, 2003, the applicant submitted an appeal from the director's decision. The AAO dismissed that appeal on February 3, 2005, after the Director, now Chief, of the AAO concurred with the director's finding. In addition, the AAO also found that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant filed a second TPS application on January 17, 2005, under CIS receipt number WAC 05 117 73313, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on April 7, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. On April 28, 2006, the applicant submitted an appeal from the director's decision. That appeal was dismissed by the AAO on March 2, 2007.

The applicant filed a subsequent TPS application on July 31, 2007, under CIS receipt number EAC 07 312 75147. The VSC director denied that application on December 7, 2007, after he determined that the applicant had failed to establish his eligibility for late registration, 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 record does not reflect that the applicant filed an appeal from the director's decision.

The applicant filed the instant TPS application on June 6, 2006, under CIS receipt number EAC 06 259 76573. The VSC director denied that application on June 23, 2008, after he determined that the applicant had failed to establish his eligibility for late registration, 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 has now submitted an appeal from the director's decision.

On appeal, the applicant states that he has continuously resided in the United States since fleeing the hurricane devastation in Honduras.

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 6, 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.

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. 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 June 23, 2008.

On appeal, the applicant reasserts his eligibility for TPS.

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.

On appeal, the applicant states that he wants to work in the United States so that he can send funds to his relatives who lost so much in the hurricane in Honduras.

The applicant did not submit new evidence along with his appeal; however, the record of proceeding contains the following documentation:

1. A copy of his birth certificate and an English translation;
2. A copy of his Salvadoran passport issued in New York, on August 20, 2001;
3. A letter from [REDACTED] stating that he has known the applicant since May 11, 1999;
4. A letter from [REDACTED] claiming to have known the applicant since January of 1999;
5. A letter from [REDACTED] attesting that he has known the applicant since August 7, 1999; and,
6. A letter from [REDACTED] stating that he has known the applicant since May of 1999.

The letters in No. 3, 4, 5, and 6 state only that the writers have “known the applicant since 1999,” and thus are not sufficiently relevant to support the applicant’s assertions of eligibility. Even in the light most favorable to the applicant these letters lack sufficient detail and context, and do not cover the entire required period. While 8 C.F.R. § 244.9(a)(2) specifically states that additional documents such as letters “may” be accepted in support of the applicant’s claim, the regulations do not suggest that such evidence alone is sufficient to establish the applicant’s qualifying residence or physical presence in the United States. In addition, the applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States on June 4, 1999. Therefore, the applicant could not have satisfied the requirement for continuous residence in the United States since December 30, 1998 and continuous physical presence in the United States since January 5, 1999.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite periods. He has, thereby, 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.

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.