U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: [redacted] Office: Texas Service Center Date: FEB 11 2004

IN RE: Applicant: [redacted]

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

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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 determined that the applicant failed to establish that he met the qualification for late initial registration. She noted that the file contains documentation indicating that the applicant did not have residence and physical presence for the dates specified by the Attorney General. The director, therefore, denied the application.

On appeal, the applicant's father states that he did not submit an application initially because he was economically unable to do so. He submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 condition described in paragraph (f)(2) of this section.

The term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. 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.

 [redacted]

The term *continuously physically present* as used in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since January 5, 1999. 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 record reflects that the applicant filed his TPS application on June 28, 2002. In order to qualify for late registration, the applicant must provide evidence that, at the time of the initial registration period of January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). Furthermore, as provided in 8 C.F.R. § 244.1, the applicant must establish continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999.

The director noted that the applicant indicated in his TPS application that he did not enter the United States until January 2000, and that documentation submitted in support of his application did not indicate his presence in the United States prior to this claimed entry. Therefore, the applicant could not have met the residency and continuous physical presence requirements as stated above. It is noted, however, that the director incorrectly stated that the TPS application indicates that the applicant entered the United States in January 2000. The application indicates that the applicant claimed to have entered the United States in January 1999.

The applicant's father, on appeal, submits a copy of a lease agreement and a copy of the applicant's immunization record. This record indicates that the applicant received vaccinations in the United States [redacted] during 2002. Other vaccinations received in 1992, 1993, 1994, and 1999 were not stamped or accompanied by a doctor's name and/or Health Department identification or any other indication that they were administered in the United States. The lease agreement was made and entered into on December 15, 1998 by the applicant's parents, and the lease lists the term from January 1, 1999 until January 1, 2000. This lease agreement, however, is not evidence that the applicant was in the United States before January 1999.

Based on the applicant's claimed entry into the United States in January 1999, the applicant, therefore, could not have met the requirements that the applicant has continuously resided in the United States since December 30, 1998, and has been continuously physically present since January 5, 1999.

It is noted that the record of proceeding contains evidence that the applicant's father, [redacted] had been granted TPS. Spouses and children (of aliens who applied for TPS under the initial designation) who did not initially apply for TPS although they are independently eligible for TPS, qualify for late registration if they are physically present in the United States and have resided in the United States prior to December 30, 1998. Furthermore, the applicant must provide evidence that, at the time of the initial registration period of January 5, 1999 through August 20, 1999, he or she falls within the provisions described in 8 C.F.R. § 244.2(f)(2).

The applicant has failed to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.