Table "5"

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

M1

JW0104_13M1844

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: JUL 01 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

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, Director
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 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 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 in the United States during the requisite period.

On appeal, the applicant submits a statement and additional documentation.

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, 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.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Any alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits to having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(1)(2)(A)(i)(I) of the Act.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, 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 his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 18, 2002.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his 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 was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On January 7, 2003, 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, in response, provided additional documentation relating to his claim of qualifying residence and physical presence.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 10, 2003.

On appeal, the applicant states that he has been in the United States since 1989. The applicant also states that his daughter is a "TPS holder" and submits a copy of her Employment Authorization Document with an expiration date of July 5, 2003. The applicant appears to be asserting that he is eligible for late registration because he is the parent of an alien eligible for TPS, however, while Bureau regulations may allow children and spouses of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS, nor do they apply to parents of TPS eligible applicants.

The applicant submitted evidence in an attempt to establish his qualifying continuous residence in the United States. However, this evidence does not mitigate the applicant's failure to file his application for TPS within the initial registration period. The applicant has not submitted <u>any</u> evidence to establish that he has met <u>any</u> 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.

The applicant submitted the following documentation:

1. A letter from the applicant stating that he is the parent of a TPS registrant;
2. A copy of his daughter's Employment Authorization Document with a expiration date of July 5, 2003;
3. Copies of two pay stubs from dated July 1, 1996 and July 3, 1996, and;
4. Copies of three envelopes postmarked January 30, 1996, March 6, 1996, and April 30, 1999.

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

On appeal, the applicant submits:

5. A copy of his passport;
6. Copies of four envelopes postmarked in 1996 and 1999;
7. A copy of a membership certificate from the dated September 11, 1994;
8. A letter from Emigrant Savings Bank dated February 6, 1999;
9. A receipt dated October 2, 1999, and;
10. A copy of an immunization record from t

The immunization record from th not credible evidence of continuous residence as it does not indicate the name, birth date, or social security number of the person receiving the inoculations. The postmarked envelopes may indicate that the applicant was in the United States during 1996 and 1999, however, the applicant claims to have lived in the United States since 1989. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these envelopes, however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States during the requisite periods. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS on this ground will also be affirmed.

Beyond the decision of the director, it is noted that the applicant has a second immigration file, that contains a Form I-601, Application for Waiver of Grounds of Excludability. The application, filed by his wife on May 28, 1997, sought to waive the applicant's inadmissibility under Section 212(a)(2)(A)(i)(I) of the Act due to an apparent September 2, 1992, conviction for sexual assault of a minor. On October 23, 1998, the application was denied by the Officer in Charge, Tegucigalpa, Honduras. Accordingly, the application for TPS is also denied based on the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

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.