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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 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

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.

Cindy M. Gomez for
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 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 submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director also determined that the applicant had not submitted sufficient evidence to establish continuous residence in the United States since December 30, 1998. The director, therefore, denied the application.

On appeal, the applicant asserts that he is eligible for temporary protected status. He submits additional evidence of residence in the United States.

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 CIS director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The term *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 term *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.

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 in the United States 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, 2005, upon the applicant's re-registration during the requisite time period.

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.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid nonimmigrant status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she 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).

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record of proceeding confirms that the applicant filed his application for TPS on June 26, 2002, after the initial registration period had closed. In support of his application, the applicant submitted evidence that he was in the United States in a valid nonimmigrant status during the initial registration period. Specifically, the

applicant submitted a photocopy of his Form I-94, Arrival/Departure Record, showing he was admitted as an H2-B nonimmigrant temporary worker on January 6, 1999, and was authorized to remain until May 29, 1999.

On August 26, 2002, 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 residence and physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States. However, he did not submit any evidence to establish that he was eligible for late registration. The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on October 28, 2002.

On appeal, the applicant submits 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 TPS within the initial registration period. Consequently, the applicant has not overcome this reason for the denial of the application.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since December 30, 1998.

As stated above, the record of proceeding confirms that the applicant filed his application for TPS on June 26, 2002. In support of his application, the applicant submitted Internal Revenue Service (IRS), Form(s) W-2, Wage and Tax Statement(s), for the years 2000 and 2001. On August 26, 2002, the applicant was requested to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant, in response, provided the following evidence:

1.) a paycheck stub dated May 25, 2001;
2.) a receipt from Globo Envios dated September 13, 2002;
3.) receipts issued by South Norwalk Electric Works on June 7, 2002 and September 13, 2002;
4.) a Cablevision work order dated November 8, 2001; and,
5.) a receipt issued by Cablevision on May 14, 2002.

On appeal, the applicant claims to have resided in the United States since December 30, 1998. He states that he believes that the regulations allow for stages of residence, and that he has established "mild residence" at the United States Embassy before December 30, 1998, and actual residence on January 5, 1999, the date his flight was scheduled to depart Honduras for the United States. The applicant states that he had been prepared to come to the United States early in the month of December 1998, but there had been a delay in the issuance of his Honduran passport. He claims that after his passport was issued, he left it at the United States Embassy on December 29, 1998, to obtain a nonimmigrant visa, but his visa application was not processed for "one or two days." The applicant asserts that his visit to the U.S. Embassy constitutes "being" in the United States, and even though he had not actually entered the United States, his "physical passport" resided in the United States overnight, which renders him eligible for TPS. He also states that if the statute actually requires him to have been physically present in the United States on January 5, 1999, he qualifies, because his original flight to the United States was scheduled to depart Honduras on January 5, 1999, even though it did not take off until January 6, 1999.

Section 101(a)(38) of the Act defines the term "United States" to mean, the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States. U.S. Embassies abroad are not included in this definition.

According to evidence in the record, including the applicant's own statement on the Form I-821 application, the applicant actually entered the United States on January 6, 1999. Notwithstanding any delays in the issuance of his passport and nonimmigrant visa, and his flight to the United States, regulations state that an applicant must have established continuous residence in the United States since December 30, 1998 and continuous physical presence since January 5, 1999.

The record of proceeding does not support the applicant's claim of eligibility for TPS. The applicant claims to have lived in the United States since January 6, 1999. It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed on this basis as well.

The burden of proof is upon the applicant to establish 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.