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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.

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 failed to establish that he entered the United States prior to December 30, 1998, and that he has been continuously physically present since January 5, 1999. The director, therefore, denied the application.

On appeal, the applicant states he did not file an application during the initial registration period because he was unemployed at the time and he was scared to apply because of his situation. The applicant submits additional evidence of his 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 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 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.

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."

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed his TPS application on November 21, 2002.

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 initially submitted a Form I-821, Application for Temporary Protected Status, on November 21, 2002, after the initial registration period had closed. The application was rejected and returned to the applicant on December 19, 2002, with a Form I-797, Notice of Action, requesting that

he submit evidence to establish that he was eligible for late registration. The applicant resubmitted the application on February 10, 2003; however, he did not submit any evidence that he was eligible for late registration.

On January 4, 2003, another Form I-797, Notice of Action, was sent to the applicant, inadvertently. The notice incorrectly stated that the applicant had not met the deadline for re-registration for El Salvador Temporary Protected Status. The applicant responded to the notice by submitting evidence that he is a citizen of Honduras. It appears that the January 4, 2003 Notice of Action was sent to the applicant in error.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration 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).

On April 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 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. He did not submit evidence to establish that he was eligible for late registration.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on May 27, 2003. On appeal, the applicant states he did not submit an application for TPS during the initial registration period because he was unemployed, and his friends warned him that he could be deported if he applied. He 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. The applicant has not established 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.

As stated above, the applicant re-submitted his application for TPS on February 10, 2003. He submitted the following evidence with the application:

1.) an affidavit from a Javier Campos, who stated the applicant lived with him from February 1996 to October 1998;
2.) a March 14, 1996 Western Union receipt; and,
3.) an earnings statement for the period ending June 2, 1996.

On April 7, 2003, the applicant was requested to submit evidence establishing his qualifying residence and physical presence in the United States. In response, the applicant submitted the following documentation:

4.) an unsigned statement from an [redacted] who stated she has known the applicant since March 20, 1999, and that they had worked together cleaning offices;
5.) an unsigned statement from [redacted] who stated he has known the applicant since October 26, 1998, and that they had worked together;
6.) an unsigned statement from a [redacted] who stated he has known the applicant since February 21, 1999, and that they had worked together part-time; and,

7.) an unsigned statement from a who stated he has known the applicant since February 21, 1999, and that they had worked together part-time.

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 states that he had previously furnished evidence of his residence in the United States. He submits the following documentation:

8.) an affidavit from a who states that he has known the applicant since October 27, 1998, and that they used to work together;
9.) an affidavit from a who states he has known the applicant since December 1998;
10.) an affidavit from a who states he has known the applicant since November 22, 1998; and,
11.) an affidavit from a Nandi Butler, who states she has known the applicant since December 29, 1998.

The applicant claims to have lived in the United States since February 11, 1996. The affidavits alone do not establish that the applicant has met the continuous residence and physical presence criteria for TPS. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support his claim; however, no such evidence has been provided for the requisite period. The sufficiency of all evidence will be judged according go its relevancy, consistency, credibility and probative value. 8 C.F.R. § 244.9(b). 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.