

U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE:

[SRC 03 223 53780]

Office: TEXAS SERVICE CENTER

Date: JUN 27 2005

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 "Robert P. Wiemann".

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 (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.

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

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 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 reparation; 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.

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. 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 July 5, 2006, 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 initial TPS application with Citizenship and Immigration Services (CIS), on September 3, 2003.

It is noted that the applicant had previously filed an earlier initial TPS application [SRC 02 210 55043] on June 25, 2002. That application was denied on August 21, 2002, after the director determined that the additional evidence submitted by the applicant did not establish his eligibility for filing after the initial registration period. The applicant did not file an appeal from that decision. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17. Since the initial application was denied on August 21, 2002, this subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

On January 5, 2004, 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 photocopies of the following documentation: two affidavits from acquaintances attesting to the applicant's residence in the United States since 1998; an affidavit attesting that the applicant lived with the affiant during the month of November 1998; cargo transport receipts dated "11-08-98," "12/Nov/98," "12-5-98," "12-26-98," "10-22-9[]," April 29, 1999, "08-02-99;" an affidavit from the President, M&G Painting, Inc., Sunrise, Florida, attesting that the applicant worked as a painter in November and December of 1998; a letter dated June 17, 2002, from [REDACTED] of St. John Bosco Church, Miami, Florida, stating that the applicant has attended the church since 1998; and, the applicant's statement that he did not have additional evidence because he lacked identification and employment authorization.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on February 26, 2004.

On appeal, the applicant states that he would like to be given "the opportunity to be legal in this country in which with a lot of difficulty [he has] lived here without having a better opportunity in employment and also to pay [his] taxes [sic]." The applicant states that he has lived in the United States since 1998 and would not like to lose his work permit. He states that he did not apply, during the initial registration period, due to lack of information and fear of being deported. In support of the appeal, the applicant resubmits additional copies of some of the cargo transport receipts. He also newly submits photocopies of the following documentation:

1. The biographic page of his Honduran passport issued on February 27, 2000, and bearing the stamp of the Secretaria De Relaciones Exteriores, Honduras;
2. Payroll work schedules, Ortega Painting Corp., Miami, Florida, dated in December 1998 and January 1999;
3. A letter dated June 19, 2001, from Bank of America, regarding tax reporting;
4. Additional cargo transport receipts dated December 20, 2000, May 20, 2001;
5. Money transfer receipts dated "12-11-2001 and December 19, 1998;"
6. A Goodwill donation receipt dated "12/06/02;"

7. A Florida Power & Light Company billing statement dated July 2, 1999;
8. A generic and partial Bally Total Fitness invoice; and,
9. Partial Bell South billing statements dated February 17, 1999 and March 17, 1999.

The applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant presented no evidence to substantiate that he had previously applied for TPS during 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 decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. It is noted that the applicant's passport was issued in February 2000 in Honduras, suggesting that the applicant was not present in the United States during the entirety of the requisite periods. In addition, some of the evidence appears to have been altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

An alien applying for temporary protected status 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.