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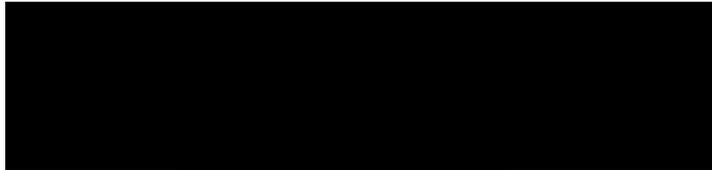
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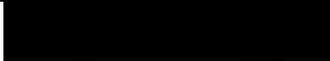


U.S. Citizenship
and Immigration
Services

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FILE:



Office: Nebraska Service Center

Date: MAR 17 2005

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IN RE:

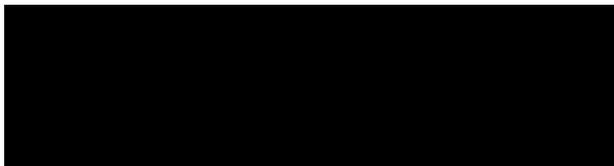
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, Nebraska 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 denied the application because the applicant failed to establish he was eligible for late registration. The director also denied the application because the applicant failed to establish he had continuously resided in the United States, and had been continuously physically present in the United States during the requisite time periods.

On appeal, counsel, on behalf the applicant asserts his eligibility for TPS and submits evidence in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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 § 244.3;
- (e) Is not ineligible under § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status 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 parole; 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. 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 Citizenship and Immigration Services (CIS), on July 18, 2003.

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 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 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 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).

On August 14, 2003, the applicant was requested to submit evidence to establish 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 continuous residence in the United States as of December 30, 1998, and his continuous physical presence in the United States from January 5, 1999, to the date of filing his application. In addition, the applicant was requested to provide evidence to establish that he had been in the United States prior to December 30, 1998. In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States; however, he did not submit any evidence to establish his eligibility for late registration. The director determined that the applicant had failed to establish he was eligible for late registration. The director also determined that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods. The director, therefore, denied the application on October 7, 2003.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS.

The first issue in this proceeding is whether the applicant has established his qualifying continuous residence and continuous physical presence in the United States. Along with the appeal, counsel did not provide any additional evidence in support of the applicant's continuous residence, or his continuous physical presence in the United States during the requisite time period for TPS. Counsel states, on appeal, that the applicant's continuous residence and continuous presence is evidenced by a letter from the applicant's church, [REDACTED] in St. Louis, Missouri. Counsel further states that the applicant's physical presence and residence, as well as the applicant's date of entry into the United States is evidenced by the following: a postmarked envelope dated September 1, 1997; two money order receipts dated August 15, 1997, and September 15, 1997; a copy of the birth certificate of the applicant's son born on October 21, 2002; and a copy of the applicant's marriage license dated May 2, 2003.

The record of proceedings contains a letter dated June 22, 2003, from Reverend [REDACTED] Associate Pastor of [REDACTED] in St. Louis Missouri. This letter from Reverend [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, Reverend [REDACTED] does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. The copy of the front of an envelope addressed to the applicant in the United States as well as the two hand-written Western Union money order transfers pre-date the requisite time periods for continuous residence and continuous presence in the United States by over one year. The copy of the birth certificate of the applicant's son and the applicant's marriage certificate post-date the requisite time periods for TPS. The applicant claims to have lived in the United States since July 20, 1997. It is reasonable

to expect that the applicant would have some other type of contemporaneous evidence to support his continuous residence and continuous physical presence during the requisite time periods. The sufficiency of all evidence will be judged according to 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 continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's decision to deny the application for TPS on these grounds will be affirmed.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his TPS application on July 18, 2003, after the initial registration period from January 5, 1999 through August 20, 1999, had closed. 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).

Counsel also indicates on appeal that the applicant entered into a "common law marriage" in 1995. Counsel also provides a copy of the applicant's marriage certificate reflecting that the applicant's marriage to [REDACTED] was solemnized on May 2, 2003, in the state of Missouri. In addition, the applicant claimed on his applications for temporary protected status and employment authorization that he was married to [REDACTED] and that he resides in the state of Missouri. Counsel's argument regarding the applicant's "common law marriage" has no merit in these proceedings. The state of Missouri, where applicant resides, does not recognize common law marriages entered into after 1921. MISSOURI REVISED STAT. Section 451.040.5.

While a review of CIS' computer systems confirms that the applicant's wife [REDACTED] was granted TPS, the record also shows that the applicant was not married until May 2, 2003. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant, during the initial registration period, was not the spouse of an alien currently eligible to be a TPS registrant, he is not eligible for late registration. Consequently, the director's decision to deny the application for TPS late registration will also be affirmed.

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.