



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

JUL 11 2006

[SRC 02 197 55790]

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 California Service Center. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 initial registration..

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 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.

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 shows that the applicant filed his application with Citizenship and Immigration Services (CIS), on June 10, 2002.

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 or 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).

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).

On June 20, 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). In response to the director's request, the applicant provided no further documentation concerning late registration eligibility. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on October 11, 1002.

It is noted that on his TPS application, the applicant indicates that he entered the United States on October 29, 1996, without inspection but that his current status is that of an F-1 nonimmigrant student. The record contains no documentary evidence to show that the applicant has been or remains in nonimmigrant student status since his purported entry into the United States in 1996, or if and when that status terminated. To be eligible to apply under the late initial registration provisions of TPS, the applicant must demonstrate that he filed for TPS no later than 60 days from the termination of his status as a nonimmigrant student. He has not done so.

On appeal, the applicant submitted 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 Temporary Protected Status within 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 the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed for this reason.

The applicant indicates on his TPS application signed on June 5, 2001, that he entered the United States on October 29, 1996. However, the record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated June 11, 2001, indicating that the United States Border Patrol apprehended the applicant after he illegally entered this country by crossing the Rio Grande River near Los Indios, Texas, on June 10, 2001. Additionally, the applicant was issued a Form I-862, Notice to Appear, ordering him to appear before an Immigration Judge that carries the allegation by the Patrol Agent in Charge in Harlingen, Texas, that "You arrived in the United States at Indios, Texas on June 10, 2001" Although the applicant could have challenged that statement at his hearing, the record shows that he did not honor that notice. On May 2, 2002, an Immigration Judge in Miami, Florida, ordered the applicant deported "in absentia" to Honduras, after he failed to appear for his hearing.

Beyond the decision of the director, it is determined that the applicant has provided insufficient evidence to establish his continuous residence and continuous physical presence during the required time period. 8 C.F.R. § 244.2 (b) and (c). Therefore the application shall be denied for these additional reasons.

Additionally, the applicant's Federal Bureau of Investigation fingerprint results report shows that on June 12, 2003, the applicant was arrested by the Miami Police Department for "DRIVING UNDER THE INFLUENCE." The final court disposition of this arrest is not included in the record of proceeding. The applicant must address this arrest and/or conviction in any future proceeding.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.