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U.S. Citizenship
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FILE: [REDACTED] Office: California Service Center Date: **AUG 28 2007**
[WAC 05 054 71395]

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). A subsequent appeal was dismissed by the Director, now Chief, Administrative Appeals Office (AAO). A motion to reopen was also dismissed by the AAO. The matter is now before the AAO on a subsequent motion to reopen. The current motion to reopen 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 current application on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

A subsequent appeal from the director's decision was dismissed on May 4, 2006, after the AAO also concluded that the applicant was not eligible to re-register for TPS. The AAO also determined that the applicant failed to show that the current application should be accepted as a late initial registration. In addition, the AAO determined that the applicant did not establish his qualifying continuous residence and continuous physical presence in the United States during the requisite timeframes.

On Jun 19, 2006, the applicant submitted a motion to reopen. That motion to reopen was dismissed by the AAO on April 27, 2007, because the applicant did not file a timely motion.

On the current motion to reopen, the applicant asserts that he has lived in the United States since 1997, and that he has answered all the requests that he has received from Citizenship and Immigration Services (CIS). The applicant also submits copies of some evidence in an attempt to establish his eligibility TPS.

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 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 reveals that the applicant filed the current application with CIS on November 23, 2004, after the initial registration period had closed.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 applicant states, in his motion, that he entered the United States in 1997, and that he has answered all requests from CIS. The applicant also submits the following evidence: a copy of his Employment Authorization Document (EAD); a copy of a receipt dated March 22, 2005, from J.D. Marble & Tile, Incorporated; a copy of a Mortgage Interest Statement for 2004; copies of utility bills dated April 27, 2004, November 23, 2004, January 6, 2005, June 3, 2005, April 11, 2005, September 8, 2005, December 3, 2005, July 27, 2006, October 9, 2006, February 1, 2007, March 13, 2007; copies of BellSouth statements dated August 2, 2003, and October 2, 2003; a copy of his home owner's policy declaration page dated April 1, 2005; copies of his Internal Revenue Service (IRS), Form W-2, Wage and Tax Statements, for the years 2004 and 2005; a copy of his IRS U.S. Individual Income Tax Return for 2005; copies of various receipts dated November 22, 2004, June 30, 2005, May 10, 2006, June 12, 2006, December 12, 2006; copies of two hand-written rent receipts dated May 25, 1997, and February 20, 1998; a copy of his mortgage account statement dated August 16, 2005; a copy of his Cingular billing statement dated September 5, 2005; a copy of a receipt dated July 10, 2005, from BrandsMart U.S.A.; a copy of a Comcast service installation receipt dated March 8, 2004; copies of two cashier's checks dated December 23, 2003, and September 22, 2004; and, a copy of a car invoice sales order dated September 6, 2002.

The applicant's motion to reopen consists of documentation relating to his claim of continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States. 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). As such, this issue on which the underlying decision was based has not been overcome on motion.

In addition, the Chief of the AAO concluded that the applicant did not establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The two hand-written rent receipts dated May 25, 1997, and February 20, 1998, pre-date the requisite time periods for Honduran TPS. In addition, these receipts are not supported by corroborative evidence during the same time period. The remaining documentation post-dates the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States. The applicant claims to have been in the United States since 1997. It would seem reasonable that the applicant would have sufficient creditable evidence to support his claimed continuous residence and continuous physical presence in the United States since that time. It is further noted that the applicant's Honduran passport was issued to him in Honduras on April 22, 1999.

The applicant has not submitted sufficient credible evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The applicant has, therefore, failed to establish that he has met the criteria described in



8 C.F.R. § 244.2 (b) and (c). Consequently, these issues on which the underlying decision was based also have not been overcome on motion.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated March 29, 2007, is affirmed.