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U.S. Citizenship  
and Immigration  
Services

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FILE:



[EAC 07 011 77403]

OFFICE: Vermont Service Center Date:

FEB 13 2008

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 "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 record reveals that the applicant filed a TPS application on January 3, 1999, during the initial registration period, under Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), receipt number SRC 99 100 50783. The director denied that application for abandonment on November 2, 2002, because the applicant failed to respond to a request to furnish the final court disposition for his August 30, 1995 arrest in Miami, Florida, for a Traffic Offense-DUI. A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen within 30 days of the denial decision. 8 C.F.R. § 103.2(b)(15). The record does not reflect that the applicant filed a motion to reopen.

The applicant filed the current TPS application, under CIS receipt number EAC 07 011 77403, on September 24, 2006 and indicated it was his first application for TPS. The director denied this application on March 6, 2007 because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asks CIS to reopen his case and give him the opportunity to be legal 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 designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2009, 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 application with Citizenship and Immigration Services (CIS) on September 24, 2006.

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 proceedings confirms that the applicant filed this application 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 director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 6, 2007.

On appeal, the applicant states that he did apply for TPS in 1999 under the name, [REDACTED]. He states that he corrected the name on the new application filed on October 11, 2006,<sup>1</sup> to [REDACTED]. The applicant further states that he had changed his name because he was afraid that the TPS program would not be extended.

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 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.

On appeal, the applicant states that he has been physically living in the United States since 1992, he has never been in any kind of trouble, and that he has provided all of the requested evidence. He submits the following documentation in the name [REDACTED] in an effort to establish his eligibility for TPS:

1. A copy of a money transfer receipt from Western Union dated March 10, 1999;
2. Copies of pay stubs and a Form W-2 Wage and Tax Statement issued by Tropical Supermarket Corp. for the year 2000;
3. Copies of pay stubs from Master Food Star Supermarket, Inc. #3 for the year 2001;
4. A copy of a Notice of Reinstatement from Union American Insurance Co., dated August 2, 2002;
5. Copies of pay stubs and a Form W-2 Wage and Tax Statement issued by The Cascade Restaurant for the year 2004;

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<sup>1</sup> Although the director stated in the March 6, 2007 decision that this TPS application was received on October 11, 2006, the Form I-821 was actually received on September 24, 2006, also after the initial registration period.

6. A copy of a pay stub from New Rabar Corp. dated May 26, 2005;
7. A copy of a Form 1040A, U.S. Individual Income Tax Return , for the year 2005;
8. A copy of a collection notice dated February 5, 2006;
9. A letter from [REDACTED] M.D. dated September 30, 1998 attesting that the applicant was at his office for a physical examination;
10. A letter from Food Star #5 Supermarket dated March 7, 2002 stating that the applicant worked as a butcher;
11. A copy of a pay stub from Biscayne Cafeteria dated October 26, 1999; and,
12. Copies of rent receipts for the period from December 2, 1998 to August 1, 2001.

The applicant also submits a copy of an Order to Attend Substance Abuse Education Program, issued to [REDACTED], by a county judge of the County Court in and for Dade County, Florida. The date the Order was issued is not clearly shown on the document.

The documentation submitted by the applicant on appeal together with evidence already in the record of proceeding does not establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods. With his initial I-821, Application for Temporary Protected Status, the applicant submitted an affidavit from [REDACTED]<sup>2</sup> who stated that one [REDACTED] was his roommate at [REDACTED] Miami, Florida, from October 1, 1998 through January 30, 2002, the date of the attestation. However, the applicant also submitted an unclear copy of a Residential Lease agreement for the same premises for the period beginning October 1, 1998 and ending on September 31 (sic), 1998 between a landlord whose name appears to be [REDACTED] and one [REDACTED]. The lease was signed by Josephine Badillo for the landlord. On appeal, the applicant submits copies of rent receipts for the period from December 2, 1998 to August 1, 2001 for rental of the same premises at [REDACTED]. The receipts were signed by [REDACTED], and [REDACTED]. The applicant did not provide an explanation as to discrepancy between [REDACTED] claim that he and [REDACTED] were roommates and the fact that the lease is in the name [REDACTED]. It is noted that the lease agreement states on page 1, section 5. c) that:

Tenant shall not assign or sublet said premises or allow any other person to occupy the leased premises without Landlord's express written consent.

[REDACTED] name is not shown on the lease agreement which raises questions concerning the authenticity of the lease agreement itself. In addition, the receipts only show the street address, and not the city and state, so they are of little probative value. The applicant also submitted copies of various utility bills in Mr. [REDACTED] name dated during the period from June 1999 through March 2002. The utility bills are not in the applicant's name and cannot be tied directly to him; therefore, they are of no probative value.

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<sup>2</sup> It is noted that the applicant stated on his current TPS application that [REDACTED] is his child, but no such relationship was previously indicated. It is further noted that [REDACTED] submitted a copy of his Florida Driver License that shows his date of birth as September 21, 1976, which is identical to that of [REDACTED].

In addition, as pointed out by the director, the applicant stated on the current TPS application (as well as on a subsequent TPS re-registration application filed on July 2, 2007, under CIS receipt EAC 07 285 72872) that he entered the United States on March 5, 1992.<sup>3</sup> However, the applicant indicated on his first TPS application and on a subsequent TPS re-registration application filed on June 10, 2003 (no receipt number assigned) that he entered the United States on February 5, 1996.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that he applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

Beyond the decision of the director, the applicant has not established his nationality and identity.

8 C.F.R. § 244.9 states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation*. Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality*. Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

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<sup>3</sup> The director correctly indicated the applicant's claimed entry dates as stated on the two TPS applications as March 5, 1992 and February 5, 1996, respectively; however, he subsequently inadvertently only stated the date as May 20, 1999.

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification;  
and/or
- (iii) Any national identity document from the alien's country  
of origin bearing photo and/or fingerprint.

A review of the record reflects that the applicant initially applied for TPS under the name [REDACTED]. He indicated on the initial Form I-821, Application for TPS, and on a subsequent TPS re-registration application filed on June 10, 2003, that one [REDACTED] was born on July 5, 1952, in Juticalpa, Olancho, Honduras, that the individual was also known as [REDACTED], that he was married to [REDACTED] (date of birth June 27, 1955) who resided in Juticalpa, Olancho, Honduras, that they had been married on August 30, 1975, in Juticalpa, Olancho, and that he had no children. With the initial TPS application, the applicant furnished a copy of the biographic page of a Honduran passport, No. [REDACTED], issued by the Consulate General of Honduras in Miami, in the name [REDACTED]. A photograph is affixed to the biographic page which appears to be that of the applicant. In addition, he submitted what appears to be a copy of an official Honduran document, "Licencia Nacional Liviana Para Conducir Vehiculo Automotriz" in the name [REDACTED], which also appears to contain a photograph of the applicant. In addition, he submitted a certificate of marriage which indicates that a [REDACTED] was married to [REDACTED] in Honduras; however, an English translation of the document was not provided.

The applicant claimed on this TPS application and on a subsequent TPS re-registration application, filed on July 12, 2007, that his name is [REDACTED]. He indicates on these application forms that he was born on May 21, 1957 in Juticalpa, Olancho, Honduras, that he is married to [REDACTED] (date of birth June 7, 1959) who resides "same above", that they had been married on August 1, 1975 in Olancho, Honduras, and that he has two children, [REDACTED] (date of birth September 11, 1976), and [REDACTED] (date of birth March 9, 1980), both of whom reside in Miami Florida. The applicant did not provide any evidence such as a birth certificate, a marriage certificate, a passport or any other official documents from Honduras to support his revised claim as to his identity,

The identity and nationality of an applicant is fundamental to the applicant's claim for TPS. According to the applicant's criminal record, his name is [REDACTED] and he was born on May 21, 1957 in Honduras. However, as stated above, on the initial TPS application, he indicated his name as [REDACTED] who was born on July 5, 1952. The Honduran passport and the certificate of birth provided each show the name [REDACTED] and the July 5, 1952 birth date as well. The new TPS application, which he now claims shows his true name, indicates a different date of birth, a different spouse, and adult children who were not identified on the initial applications. He has not provided an explanation for these additional revisions on the current applications and only states on appeal that that he had changed his name because he was afraid the TPS program would end. Pursuant to 8 U.S.C. § 1182(a)(6)(C)(i), an alien who misrepresents a material fact to procure an immigration benefit may be determined to be inadmissible to the United States.

The applicant has not submitted a birth certificate, a passport or any other national identity documentation to support his current TPS application. The applicant's conflicting claims as to his true identity not only discredits his claim as to the critical elements of identity and nationality, but, in the absence of an explanation, also indicates an overall lack of credibility regarding the entire claim. The applicant has not established his nationality and identity. Consequently, the TPS application must be denied for these reasons as well.

It is further noted that the applicant's Federal Bureau of Investigations (FBI) Fingerprint Results Report reflects that the applicant was arrested by the Miami Dade Police Department in Miami, Florida on August 30, 1995, under the name [REDACTED], and charged with Traffic Offense - DUI. While, on appeal, the applicant has furnished a copy of an order to attend a substance abuse program, a copy of the final court disposition for this arrest is not included in the record of proceeding. CIS must address this arrest and any convictions in any future proceedings.

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 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.