



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: DEC 09 2013

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you.


Ron Rosenberg
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 citizen of Honduras who is applying for 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 had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999.

On appeal, citing *Matter of N-C-M-*, 25 I&N Dec. 535 (BIA 2011), counsel asserts that the applicant is eligible for late initial registration under section 8 C.F.R. § 244.2(f)(2)(iv).

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 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 Secretary 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.

The term *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 term *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 in the United States since January 5, 1999. The designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2015, upon the applicant's re-registration during the requisite time period.

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 U.S. Citizenship and Immigration Services (USCIS). 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Contrary to counsel's assertion, the director did not deny the application due to ineligibility under section 8 C.F.R. § 244.2(f)(2). Rather, the application was denied because the applicant failed to establish continuous residence in the United States since December 30, 1998 and continuous physical presence in the United States since January 5, 1999.

The applicant filed his initial TPS application April 9, 2012. The applicant indicated on said application to have entered the United States in July 2003. In denying the application on February 8, 2013, the director determined that while the applicant had met the criteria for late registration as a child of an alien currently eligible to be a TPS registrant, he was ineligible for the benefit sought as he did not meet the regulatory requirement of continuous residence since December 30, 1998 and continuous physical presence since January 5, 1999.

While regulations may allow children of TPS beneficiaries to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. An alien may be granted TPS if the alien establishes that he or she meets the requirements listed in subparagraphs (a), (b), (c), (d), (e) and subparagraph (f)(1), or (f)(2). 8 C.F.R. § 244.2. In *Matter of Echeverria*, 25 I&N Dec. 512 (BIA 2011), it was held that a late initial registrant for TPS under 8 C.F.R. § 244.2(f)(2) must independently meet all initial registration requirements of TPS.

Further, a careful reading of the statute provided in section 244(c) of the Act states that a national of a designated foreign state is eligible for TPS if, (i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state; (ii) the alien has continuously resided in the United States since such date as the Secretary may designate. As stipulated in section 244(c), the Secretary designated the dates required to establish continuous residence as December 30, 1998, and continuous physical presence as January 5, 1999. The applicant, in this case, was not present in the United States during the requisite periods required to establish continuous residence and continuous physical presence. The AAO is bound by the clear language of the statute and lacks the authority to change the statute. The statute did not provide for a waiver of the continuous residence and continuous physical presence requirements.

The applicant arrived in the United States subsequent to the eligibility period. Therefore, he cannot meet the criteria for continuous residence and continuous physical presence in the United States during the requisite periods described in 8 C.F.R. § 244.2(b) and (c). The AAO is not required to approve an application where eligibility has not been demonstrated. See e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

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.

Finally, while not the basis for the dismissal of the appeal, it is noted that the record reflects that a removal hearing was held on March 20, 2012 and the applicant was ordered removed from the United States.

ORDER: The appeal is dismissed.