



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **FEB 07 2013** Office: VERMONT SERVICE CENTER

FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting 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 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 that he was eligible for late registration. The director also denied the application because the applicant had failed to establish his nationality, his qualifying continuous residence, and his continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish his continuous physical presence in the United States. Counsel states that the applicant has suffered extreme hardship as his younger brother died in 2006 and his other brother was diagnosed with scoliosis in 2007. Counsel submits the applicant's birth certificate to establish his Honduran nationality as well as additional evidence in an attempt to establish the applicant's continuous residence and continuous physical presence 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 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 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;

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- (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 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 since January 5, 1999. The designation of TPS for Hondurans has been extended several times, with the latest extension valid until July 5, 2013, 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 first issue in this proceeding is whether the applicant has established his nationality.

A review of the record of proceeding indicates that in response to a Notice of Intent to Deny,<sup>1</sup> the applicant provided a copy of his Honduran passport and his birth certificate with English translation.<sup>2</sup> Thus, it is unclear why the director determined that the applicant had not established his nationality. Accordingly, the applicant has established that he is a national of a foreign state that is currently eligible for TPS. Therefore, the director's finding on this issue will be withdrawn.

The second and third issues in this proceeding are 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.

The applicant was also requested in the Notice of Intent to Deny to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, submitted his: elementary reports cards from [REDACTED] in [REDACTED], Texas for 1997 through 1999; an immunization record reflecting vaccinations given on April 20, 2001<sup>3</sup>; medical documents for services rendered January 25, 2004 through January 31, 2004; and medical billing statements dated December 30, 2010 and January 5, 2011.

The director concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods as evidence submitted only served to establish his residence and physical presence from 1997 through 1999, 2001, 2004 and 2011. Accordingly, on December 1, 2011, the director denied the application.

Counsel, on appeal, provided: (a) a statement dated September 19, 2011, from [REDACTED], who claims to be a former criminal investigator with the legacy Immigration and Naturalization Service and who attested to the applicant's 1987 entry into the United States; and (b) documents relating to the death of the applicant's brother and to the medical condition of his other brother.

The statement of September 19, 2011, was not notarized or attested to under penalty of perjury, and only serves to establish the applicant's entry date in the United States. It is noted that the applicant's entry date is not in dispute in this proceeding. This statement and the remaining documents have no probative value or evidentiary weight as they also do not serve to establish the applicant's continuous residence since December 30, 1998 and his continuous physical presence since January 5, 1999, in the United States.

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<sup>1</sup> The notice was dated June 7, 2011, but it was returned by the U.S. Postal Service as undeliverable; the notice was re-mailed to the applicant on June 29, 2011.

<sup>2</sup> The applicant provided a copy of his passport in response to a Request for Additional Evidence dated October 6, 2003. *See Notice of Decision dated July 15, 2004.* In addition, along with the filing of his Form I-765, Application for Employment Authorization, on June 29, 1999, the applicant provided a copy of his birth certificate with English translation.

<sup>3</sup> Vaccinations were also administered during the early 1990s.

As evidence to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods, counsel, on appeal, provides previously submitted documents along with copies of:

- Notices (dated in 2000, 2002, 2003, 2008, 2009 and 2010) from the legacy INS and USCIS regarding the filing of TPS applications and Form I-765, Application for Employment Authorization.
- Fingerprint notifications dated November 17, 1999 and September 2, 2010, informing the applicant of his scheduled appointments on December 15, 1999 and September 27, 2010.
- A Notice of Decision dated May 7, 2009, from the Director, Vermont Service Center, denying the re-registration application under [REDACTED] because the applicant's initial application under receipt number [REDACTED] had been denied on August 3, 2005.
- TPS applications and Forms I-765 signed June 24, 1999, June 6, 2000, July 28, 2001, and November 12, 2008.

These documents, however, only serve to establish that TPS and employment authorization applications had been filed on their respective dates; they do not serve to establish continuous residence and continuous physical presence in the United States during the periods in question as they are not supported by any corroborative evidence. As the applicant claimed to have lived in the United States since 1987, it is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided. It is unclear why the applicant would provide school records for only the 4<sup>th</sup> and 5<sup>th</sup> grades, but not for the remaining school years.

The applicant has failed to establish continuous residence and continuous physical presence in the United States for 2000, 2002, 2003, and 2005 through August 13, 2010.

The applicant has failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. He has, therefore, 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 be affirmed.

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

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. 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.

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USCIS records reveal that the applicant filed his initial application [REDACTED] on June 29, 1999. Said application was denied on July 15, 2004, by the Director, Texas Service Center, as it was determined that the applicant failed to submit requested documents. The applicant filed a Form I-290B and indicated that he was filing a motion to reopen from the director's decision. On March 22, 2005, the motion was granted and the director reopened the proceedings in order for the applicant to fulfill the fingerprinting requirements. On March 30, 2005, a notice was sent to the applicant's address of record requesting him to appear for fingerprinting on April 13, 2005. The notice, however, was returned by the U.S. Postal Service as undeliverable. It must be noted that the notice was sent to the applicant's address of record which he maintained on motion, and there is no evidence of a change of address. On August 3, 2005, the TPS application was denied again by the Director, Texas Service Center.

The applicant filed a re-registration application [REDACTED] on August 23, 2001. On July 14, 2006, the re-registration application was denied by the Director, Texas Service Center, because his initial application had been denied due to abandonment (the applicant had failed to appear for his scheduled fingerprint interview) and, therefore, he was not eligible to file a re-registration application. No motion was filed from the denial of that application.

The applicant filed a TPS application [REDACTED] on November 16, 2008, which was rejected on November 24, 2008.<sup>4</sup> The applicant then filed a TPS application [REDACTED] on December 14, 2008, which was denied by the Director, Vermont Service Center, on May 11, 2009.<sup>5</sup> The applicant filed a TPS application [REDACTED] on July 8, 2010, which was rejected on July 28, 2010.<sup>6</sup>

The applicant filed the current TPS application on August 13, 2010.

The applicant was also requested in the Notice of Intent to Deny to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, only provided evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application.

On appeal, the applicant neither addresses the finding of his ineligibility as a late registrant nor provides any evidence to establish his eligibility as a late registrant. A previous filed application for TPS does not meet the criteria set forth in 8 C.F.R. § 244.2(f)(2)(ii), and does not render the applicant eligible for subsequent late registration. The provisions for late registration were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure

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<sup>4</sup> The TPS application was not signed by the applicant and it was filed on an outdated version of the form.

<sup>5</sup> The Form I-765 accompanying this TPS application was denied on May 7, 2009, because the initial TPS application has been denied on August 3, 2005 and, therefore, he was ineligible for employment authorization.

<sup>6</sup> The TPS application was not accompanied by the correct fee or no fee was submitted.

that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant has not submitted evidence that he has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will also 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.

**ORDER:** The appeal is dismissed.