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U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: [REDACTED]
[SRC 03 205 55543]

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.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 his eligibility for late registration. The director also found that the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite periods. The director further found that the applicant failed to provide the final disposition of his arrest.

On appeal, the applicant provides a statement and additional documentation.

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 first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the latest extension valid until July 5, 2006, upon the applicant's re-registration during the requisite time period.

As stated in 8 C.F.R. § 244.1 "register" means "to properly file, with the director, a completed application with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed his initial application with Citizenship and Immigration Services (CIS), on July 14, 2003.

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 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 own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed his application for TPS on July 14, 2003, after the initial registration period had closed. 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).

In a notice of intent to deny, dated August 13, 2003, 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). The applicant was also requested to submit evidence to establish his continuous residence and his continuous physical presence in the United States

during the required timeframes. The applicant was further requested to provide "certified court dispositions of all arrests."

The director found that the applicant, in his response to the notice of intent to deny, failed to provide evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes, failed to establish his eligibility for late registration, and failed to provide a disposition of his arrest. Consequently, the director denied the application on January 13, 2004.

On appeal, the applicant states that in the case of his arrest he "was exonerated, because the state [sic] declines to file. - [sic] When I pay the bail."

The applicant submits: copies of previously submitted documentation of his arrest report; documentation pertaining to [REDACTED] an affidavit of the beneficiary testifying that he is the "Common-Law husband of **ELBA CESARINA MARTINEZ**;" a copy of a Texas identification card belonging to [REDACTED] copy of the applicant's Texas driver's license; a copy of an approval notice for Form I-765, Application for Employment Authorization, from U.S. Citizenship and Immigration Services for receipt number SRC0320450104; a copy of the applicant's and [REDACTED] Apartment Lease Contract, which began on March 1, 1999 and ended on February 28, 2000; a copy of the applicant's Title Application Receipt, dated March 30, 2000; a copy of a page of the applicant's Form 1040, U.S. Individual Income Tax Return, for the year 2000; a copy of a bill from the Department of Public Works and Engineering Delinquent Water Bill, for July 6, 2002; copies of the "Department of Public Works and Engineering Turn Off Bill" for June 14, 2002, and September 16, 2002; and, a copy of the applicant's vehicle registration issued on June 9, 2000.

The applicant has not submitted any evidence on appeal to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The applicant's simply attesting to his being the common-law husband of [REDACTED] is not sufficient in establishing that he is the spouse of an alien currently eligible to be a TPS registrant. Under the provisions of the Texas Family Code a common-law marriage may be shown by establishing three factors: (1) an agreement by the parties to be married, (2) living together in Texas after the agreement is made, and (3) representation to others by the parties that they are married. *Matter of Garcia*, 16 I&N Dec. 623, 624 (BIA 1978). The applicant has failed to provide any evidence to establish that these factors have been met. Therefore, this record of informal marriage cannot be accepted for purposes of this application. The applicant has not established his eligibility for late registration. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The second issue raised by the director to be addressed in this proceeding is whether the applicant has established his continuous residence and his continuous physical presence in the United States during the required timeframes.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

As previously stated in the above-mentioned notice of intent to deny, the applicant was requested to submit evidence to establish his continuous physical presence and his continuous residence in the United States during the requisite timeframes.

The director found that the applicant, in his response to the notice of intent to deny, failed to provide evidence of his continuous residence and his continuous physical presence in the United States during the requisite timeframes. Consequently, the director denied the application on January 13, 2004.

On appeal, the applicant states that he previously presented proof by mail.

The majority of the documentation contained in the record and provided on appeal was issued either before the qualifying timeframes or almost a year after the qualifying timeframes. The applicant's simply stating on appeal that he previously presented proof "last time by mail," is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record contains no documentary evidence to validate the applicant's day-to-day presence and residence in the United States during the qualifying timeframes. The applicant has failed to provide sufficient evidence 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 remaining issue raised by the director to be addressed in this proceeding is whether the applicant provided the final disposition of his arrest.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General [now the Secretary of the Department of

Homeland Security (the Secretary)] finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the State as a misdemeanor, and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

The Federal Bureau of Investigation report, contained in the record of proceeding, reflects that the applicant was arrested in San Diego, Case [REDACTED] for one charge of burglary in the first degree. The applicant, as previously stated, was requested on December 22, 2003, to submit the final disposition of this arrest. Because the applicant failed to submit this requested information, the director denied the application on January 13, 2004.

On appeal, the applicant states that his arrest is true, but that he was in the wrong place. The applicant also states that he has proof that he was not at fault. The applicant further states that he was exonerated when he paid the bail. Nevertheless, the applicant has not furnished the court disposition of his arrest. Consequently, the director's decision to deny the TPS application on this ground will also be affirmed.

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.