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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[LIN 02 234 50970]

Office: NEBRASKA SERVICE CENTER

Date: APR 14 2005

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, Nebraska 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he was eligible for late registration.

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 reveals that the applicant filed his initial application [LIN 00 233 50491] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 8, 2000, after the initial registration period had closed. That application was denied on November 14, 2000, for late TPS registration. On December 26, 2000, the applicant filed an appeal on the director's decision to deny his application. The director of the AAO subsequently dismissed the applicant's appeal on May 21, 2001. The applicant filed a motion to reopen to the director's decision on June 25, 2001, which was dismissed by the director of the AAO on February 15, 2002.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, [LIN 01 253 53492] on August 20, 2001. The director denied this second application on January 8, 2002, because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The applicant did not file either a motion or an appeal during the requisite timeframe.

On July 1, 2002, the applicant filed his third Form I-821 [LIN 02 234 50970]. The director denied this third application on March 3, 2002, because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The director also denied this application because the applicant failed to establish his continuous residence in the United States since December 30, 1998. The applicant filed an appeal to the director's decision on this application, which is now before the AAO.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on July 1, 2002. Since the initial application was denied on November 14, 2000, and the second application was denied on January 8, 2002, the applicant's third application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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, 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 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.

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. 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.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on July 1, 2002.

The burden of proof is upon the applicant to establish that he 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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his 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 was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/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).

On January 21, 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 establishing his continuous residence in the United States prior to December 30, 1998, and his continuous physical presence in the United States since January 5, 1999, to the date of filing his application. The applicant, in response, provided some documentation in attempt to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The director determined that the applicant had failed to establish his continuous residence in the United States since December 30, 1998. The director also determined that the applicant failed to establish his eligibility for late registration. Therefore, the director denied the application on March 3, 2003.

On appeal, the applicant submits evidence in an attempt to establish his qualifying continuous residence and continuous 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.

On appeal, the applicant submits the following documentation: copies of a work history report dated September 1, 1999, from [REDACTED] in Waukegan, Illinois, reflecting work hours from April 11, 1997 to August 10, 1998; a copy of a hand-written receipt dated February 10, 1999, from Direct Factory Furniture; copies of hand-written petty cash receipts dated June 6, 2001 and July 22, 2001; copies of service statements dated July 30, 1999 and September 2, 1999, from TCI of Northeast Illinois, bearing the name of [REDACTED] a copy of an employment letter dated July 19, 1999, from Anita Langley, Personnel Coordinator, indicating that the applicant was employed by her company from August 4, 1994 to August 10, 1998; a copy of a receipt dated August 29, 1999, from Trak Auto; copies of hand-written receipts dated January 25, 1999 and September 13, 1999, from Paz Express in Waukegan, Illinois; copies of a monthly billing statements dated October 16, 1999 and December 16, 1999, from Ameritech bearing the name of [REDACTED] copies of service statements dated November 2, 1999 and May 2, 2000, from AT&T Cable Services of NE Illinois, bearing the name of [REDACTED] copy of a receipt dated December 2, 2002, from Twin City Auto Parts, Inc.; copies of money orders dated November 21, 2000, July 21, 2001, and August 16, 2001, made payable to the Service; copies of United States Postal Service receipts dated June 6, 2000, October 16, 2001 and February 5, 2003, for correspondence to the Service; copies of his earnings statements dated March 18, 2001 and April 1, 2001, from Team Management Services, Inc.; copies of earning statements dated May 7, 2000 from QPS Staffing and Labor Temps North, Inc., bearing the name of [REDACTED] and [REDACTED] respectively; copies of his employee identification from Kimco Corporation; and copies of United States Postal Service return receipts for correspondence received by the Service.

The applicant also states, on appeal, that he has used the assumed name of Mr. [REDACTED]. The applicant also states that he and Mr. [REDACTED] are one and the same person. A review of the record of proceedings reflects that the applicant-submitted copies of his birth certificate and his Honduran identification

card bearing the name of [REDACTED]. However, the applicant has not provided any credible evidence to establish the use of his claimed name of [REDACTED]. Evidence of the use of two names may include official court documents registered with the proper civil authorities. It is also noted that the applicant has submitted evidence bearing the name of [REDACTED]; however, the applicant has not submitted any evidence establishing the legal use of this name as well. As such, only evidence bearing the name of [REDACTED] will be considered in these proceedings.

The work history report from Tandem Staffing for the Labor World of Waukegan and the letter from Ms. Langley reflecting employment from April 11, 1997 to August 10, 1998 predate the requisite time period for Honduran TPS. The hand-written petty cash receipts, the receipts from Paz Express as well as the receipt from Direct Factory Furniture postdate the qualifying time period for continuous presence in the United States. The copy of the receipt from Twin City Auto Parts, Inc. does not bear a name of the applicant, and the copy of his employee identification is not dated. In addition, it is also noted that the applicant submitted documentation previously furnished and contained in the record of proceedings. As such, the applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States during the requisite time period. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for TPS on this ground will also be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence during the requisite time periods. 8 C.F.R. § 244.2(b). Therefore, the application will also be denied for this reason.

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.