

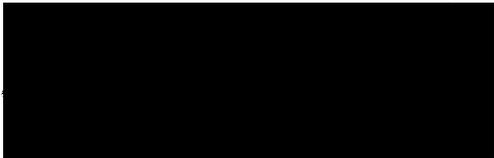
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



M1

FILE:

[REDACTED]
[LIN 02 233 51893]

Office: Nebraska Service Center

Date: APR 15 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be granted and 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 had failed to establish his eligibility for late TPS 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 record reveals that the applicant filed his initial application [LIN 99 229 51770] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 22, 1999. That application was denied on January 7, 2000, for abandonment. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on July 1, 2002. The director denied this second application [LIN 02 233 51893] on February 24, 2003, because the applicant failed to establish his eligibility for TPS late registration.

A subsequent appeal from the director's decision was dismissed on November 21, 2003, after the Director of the AAO also concluded that the applicant had failed to establish that he was eligible for late registration. The director of the AAO also concluded that the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods. On December 15, 2003, the applicant submitted a motion to reopen.

On motion to reopen, the applicant reasserted his claim of eligibility for TPS. The applicant also submitted some evidence in an attempt to establish his eligibility for late TPS registration, and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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 February 24, 2003, the subsequent 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.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she 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 or she 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).

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

The applicant states, in his motion, that he entered the United States prior to December 30, 1998. He further states that he has provided evidence previously bearing his assumed name of [REDACTED]. He also states that he believes he has met the date of entry, nationality, identity, and late registration criteria for TPS. Along with his

motion, the applicant provides some documentation in an attempt to establish his eligibility for late registration, as well as his continuous physical presence and continuous residence in the United States during the requisite time periods.

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

The applicant's motion to reopen consists of documentation relating to his claim of continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999, to the date of filing his application. 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, to the date of filing his application.

Along with his appeal, the applicant provides the following documentation: a copy of the biographical pages of his Honduran passport issued on July 21, 1999 in Chicago, Illinois; a copy of his Honduran birth certificate along with an English translation; a copy of his Honduran personal identification card issued on September 24, 1997; a copy of a hand-written receipt dated September 25, 1998, from McHales Furniture, in Waukegan, Illinois; a copy of an earnings statement dated November 13, 1998, bearing the name of [REDACTED]; a copy of a hand-written receipt dated December 23, 1998, from Soto Jewelers, in Waukegan, Illinois; a copy of a letter dated July 3, 1999, from the Consul General of Honduras indicating that applicant had applied for a passport; copies of earnings statements dated July 30, 1999, September 2, 1999, and January 11, 2000, from Pallet Sales and Design Company, bearing the name of [REDACTED]; copies of hand-written receipts dated August 21, 1999, September 18, 1999, and November 27, 1999, from Tikal Auto Sales; a copy of his temporary registration permit identification card dated August 21, 1999; a copy of the title for his vehicle issued on October 27, 1999; copies of an Internal Revenue Service, Form W-2, Wage and Tax Statements, for the years 1999 and 2000, bearing the name of [REDACTED] with an address of [REDACTED]; a copy of a check from First Midwest Bank dated December 15, 2000, made payable to the applicant; copies of hand-written receipts dated August 1, 2000 and September 25, 2002, from Harmony Haven Furniture; copies of hand-written receipts dated March 8, 2000, August 5, 2000, and August 12, 2002, from Jorge I. Rodriguez Insurance Agency, Inc.; a copy of an order dated October 13, 2000, to appear before the Circuit Court of the 19th Judicial Circuit regarding his arraignment; a copy of his registration dated January 6, 2001, for classes at the College of Lake County for the Spring 2001 term; copies of his auto insurance cards dated August 6, 2000, August 7, 2001, and August 13, 2002; a copy of a title for his vehicle dated August 19, 2002; a copy of a hand-written receipt from the Clerk of the Circuit Court for payment of fines in the amount of \$200 on February 21, 2003; and a copy of a letter dated February 22, 2002, from Jorge I. Rodriguez Insurance Agency, Ltd.

On appeal, the applicant states that he used an assumed name of [REDACTED] for working purposes only. A review of the record of proceedings reflects that the applicant submitted copies of his birth certificate, his

Honduran passport and 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 documentation bearing the name of [REDACTED] however, the applicant has not submitted any evidence establishing the legal use of this name. As such, only evidence bearing the name of [REDACTED] will be considered in these proceedings.

The copies of hand-written receipts provided by the applicant are not supported by any other corroborative evidence during the requisite time periods. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. The applicant claims to have lived in the United States since August 25, 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application on these grounds will also be affirmed.

It also is noted that the applicant has submitted evidence reflecting his arraignment and payment of court fines to the Circuit Court in Waukegan, Illinois (case no. [REDACTED]).

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.