

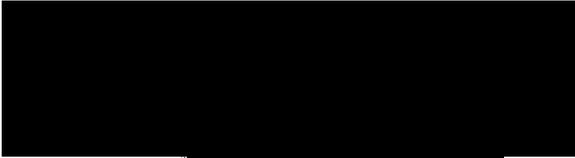


U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
[LIN O3 240 50212]

Date: **AUG 01 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.

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 because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a brief and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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 § 244.3;
- (e) Is not ineligible under § 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;
 - (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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on August 6, 2003, more than three years and eleven months after the initial registration period had expired.

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 must 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).

In support of his initial TPS application, the applicant submitted the following documentation:

1. A photocopy of an extract of his Honduran birth certificate, with English translation, issued in Honduras on December 26, 2001;
2. A photocopy of his Honduran national identity card, issued in Honduras on August 10, 1997;
3. A photocopy of a "Nebraska Identification Card," issued on December 11, 2002; and,
4. An unsigned letter, dated June 5, 2003, from Western Union, Bridgeton, Missouri, stating that the applicant sent money transfers in September and December 1998.

On November 5, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration. The applicant was also requested to submit evidence to establish his nationality and identity, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted:

5. A photocopy of the identification page from his Honduran passport, issued in Phoenix, Arizona, on September 16, 2003;
6. Affidavits from acquaintances;
7. Photocopies of receipts, dated September 1999, and April 2000 to September 2000;
8. Photocopies of earnings statements, dated January 1999 to December 2000; and, May 2001;
9. A photocopy of his 2000 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement; and,
10. A photocopy of his 2000 IRS Form 1040, U.S. Individual Income Tax Return.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for late registration. The director also determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a brief stating that he is confused by CIS regulations regarding eligibility for TPS. In support of his appeal, the applicant submits the following additional documentation:

11. Photocopies of his 2001 and 2002 IRS Forms W-2;
12. Photocopies of his 2001 and 2002 IRS Forms 1040;
13. Photocopies of a document, dated February 2001; and,

14. Photocopies of earnings statements, dated April 2003, December 2003, and January 2004.

It is concluded that the applicant has failed to overcome the director's decision. The record confirms that the applicant did not file his TPS application until after the initial registration period had expired. The applicant has submitted evidence in an attempt to establish his continuous residence and continuous physical presence in the United States; however, this evidence does not mitigate the applicant's failure to file his Form I-821 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 decision to deny the application for Temporary Protected Status for this reason will be affirmed.

Furthermore, there are discrepancies in the documentation provided by the applicant as evidence to establish his continuous residence and continuous physical presence in the United States. The uncertified photocopies of the applicant's IRS Forms 1040 (Nos. 10 and 12, above) indicate his Social Security number as [REDACTED]. However, the photocopies of his earnings statements (Nos. 8, 9, 11, and 14) indicate his Social Security number as [REDACTED]. These discrepancies have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988). Consequently, the director's decision to deny the application for Temporary Protected Status for this reason 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.