

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



MA

**AUG 01 2005**

FILE: [REDACTED]  
[LIN 03 231 51139]

Office: NEBRASKA SERVICE CENTER

Date:

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 statement and additional documentation.

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

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, [LN 00 234 50381], on August 14, 2000, after the initial registration period had ended. That application was denied on November 15, 2000. There is no indication in the record that the applicant filed an appeal of that decision. The applicant subsequently filed the instant Form I-821 on July 25, 2003.

**Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered, must be considered as either a request for annual re-registration or as a new filing for TPS benefits.** If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17.

Since the applicant's first Form I-821 application was denied on November 15, 2000, the instant application cannot be considered as an application for annual re-registration. The instant application can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period.

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. As previously indicated, the applicant filed the instant Form I-821 on July 25, 2003, more than three years and eleven months after the initial registration period had ended.

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 Citizenship and Immigration Services (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 application, the applicant initially submitted the following documentation:

1. A photocopy of his Honduran birth certificate, with an English translation provided by the applicant;
2. A photocopy of the identification page from his Honduran passport, issued in New York, New York, on February 22, 2002;
3. Photocopies of documentation indicating that he married Rita Fay Webster in Houston, Texas, on January 20, 1994;
4. A photocopy of his 2000 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement;
5. Photocopies of earnings statements for the one-week pay periods ending May 24, 1998; June 7, 1998; November 29, 1998; December 13, 1998; May 30, 1999; and July 30, 2000;
6. Photocopies of envelopes, postmarked May 28, 1999; September 9, 2000; and, December 26, 2001; and
7. Photocopies of invoices, dated December 8, 1995; December 15, 1995; and, January 12, 1996.

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 qualifying continuous residence

and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted the following additional documentation:

8. A photocopy of an insurance certificate, dated September 2, 2000;
9. A photocopy of a Better Workers' Compensation (BWC) order, dated June 21, 1999;
10. A photocopy of a BWC identification card, issued on June 17, 1999;
11. A photocopy of a Harris County, Texas, court record, dated August 19, 1996;
12. A photocopy of a Franklin County, Ohio, municipal court record, dated November 20, 2001;
13. A photocopy of a Western Union Money Transfer receipt, dated December 11, 1998; and,
14. A photocopy of a check paid to the applicant on November 16, 2001. Photocopies of envelopes, postmarked January 14, 1997; February 24, 1997; April 23, 1998; June 22, 1998; March 29, 1999; May 28, 1999; and, December 1, 1999.

The director determined that, while the applicant had submitted evidence to establish his identity and nationality, he had failed to submit 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:

15. A letter, dated December 20, 2003, from National City Bank, Broad-Hamilton Office, Columbus, Ohio, stating that the applicant opened a checking account on December 5, 1997;
16. A letter, dated December 12, 2003, from [REDACTED] stating that she has known the applicant since the summer of 1998; and,
17. A letter, dated December 12, 2003, from [REDACTED] stating that the applicant had resided in her home continuously since 1996.

Based on a review of the record, it is concluded that the applicant has submitted sufficient documentation to establish his qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, to the date of filing his application on July 25, 2003. 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 will be affirmed.

It is noted that CIS records reflect that the applicant was previously admitted to the United States as a nonimmigrant crewman (C-1) on February 25, 1977, to join the M/S Cunard Princess and to depart the United States by February 27, 1977. However, his position on the M/S Cunard Princess had been filled and he was reassigned to the M/S Italia. On February 28, 1977, the applicant was apprehended as unlawfully present in the United States and was given until March 1, 1977, to depart. There is no record of the applicant's departure on or before that date.

It is further noted that the fingerprint record contained in the record of proceeding indicates that the applicant also uses the alias [REDACTED] and that he was deported from the United States to Honduras under that name on July 18, 1988. The fingerprint report also reflects that the applicant was arrested in Ohio for Domestic Violence under the name [REDACTED] on September 9, 2000. The disposition of that arrest is not contained in the record.

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.