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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



[EAC 03 207 53605]

Office: VERMONT SERVICE CENTER

Date:

FEB 02 2005

IN RE:

Applicant:



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 Acting Director, Vermont 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 acting director denied the application because the applicant failed to establish he was eligible for late registration. The acting director also found the applicant failed to establish his continuous physical presence in the United States during the requisite time period.

On appeal, the applicant submits a brief statement and additional documentation. The applicant asserts that he filed timely filed his initial TPS application on February 2, 1999. He also asserts that he submitted evidence of his continuous physical presence on August 29, 2003.

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 burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

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 [EAC 99 155 50588], on April 27, 1999, during the initial registration period. On September 9, 1999, the director requested the applicant to submit evidence in support of that application. The applicant failed to respond to the director's request.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The applicant's first TPS application was denied on May 30, 2001, for failure to respond to a request for evidence to establish his eligibility for TPS. 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 director's denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the instant Form I-821 on June 26, 2003. The acting director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The director also denied the application because the applicant had failed to establish his qualifying continuous physical presence in the United States during the requisite time period. While the acting director found the applicant ineligible for TPS, the director's decision did not fully explain the entire basis for denial.

**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-181 application was denied on May 30, 2001, 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.

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 connection with the instant application, the applicant was requested, on August 14, 2003, to submit evidence establishing his eligibility for late registration. He was also requested to submit evidence establishing his qualifying continuous physical presence in the United States during the requisite time period.

In response, the applicant submitted documentation, including:

1. An original receipt for a money transfer, dated January 4, 1999;
2. An un-translated receipt from Giant Express, Inc., Elizabeth, New Jersey;
3. Photocopies of his daughter's birth certificate and passport. The applicant's daughter was born on [REDACTED];
4. An original money transfer receipt, dated March 27, 2000;
5. Original receipts from Cablevision, dated December 30, 2000, and March 30, 2002;
6. Photocopies of his 2000 and 2001 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements;
7. An un-dated original letter from Union Labor Life Insurance Company, requesting a response by February 9, 2001;
8. Original statements from the Hudson County Carpenters Annuity Fund, West Trenton, New Jersey, dated December 30, 2001;
9. A photocopy of a payroll statement from M.J.P. Construction Co., Inc., Rutherford, New Jersey, dated August 16, 2001;
10. Photocopies of account statements from the Valley National Bank, Maplewood, New Jersey, dated December 31, 2001; June 30, 2003; and, July 31, 2003;
11. A photocopy of an examination permit issued by New Jersey Motor Vehicle Services, dated September 13, 2001;
12. A photocopy of a letter from the Northern New Jersey Regional Council of Carpenters, Hackensack, New Jersey, dated October 4, 2001, showing dues paid through August 31, 2001;
13. An original account statement from the Federal Credit Union, Parsippany, New Jersey, dated April 1, 2003;
14. A photocopy of a letter from the Selective Insurance Company of America, Branchville, New Jersey, dated June 27, 2003; and,
15. A Social Security Administration statement, dated July 8, 2003, showing income received by the applicant in 1999, 2000, and 2001;

It is concluded that the applicant has submitted sufficient evidence to establish his continuous physical presence in the United States from January 5, 1999, through to the date of filing the instant application. However, the record confirms that the applicant filed the instant application, considered as his initial TPS application, after the initial registration period had expired. 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 acting director's decision to deny the application for temporary protected status will be affirmed.