

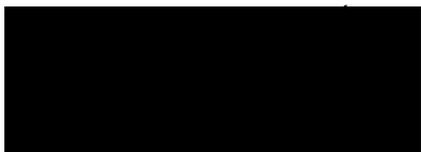
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



MU

FEB 10 2005

FILE:



Office: TEXAS SERVICE CENTER Date:

[SRC 02 209 54229]

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.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is applying for 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.

On appeal, the applicant provides a statement and additional evidence.

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 temporary protected status 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 initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 24, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

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).

On November 15, 2002, 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, in response, provided documentation relating to his residence and physical presence in the United States, consisting of a pay stub and an employer affidavit.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on December 23, 2002.

On appeal, the applicant states that he has submitted the only evidence that he has and that it is unfair to request documents that one cannot obtain. The applicant also asserts that in every round of extensions granted by the Attorney General, new applicants have had the opportunity to apply for TPS, except those who did not meet the initial entry date and/or residence status. In support of his appeal, the applicant submits an affidavit dated December 8, 2002, from [REDACTED] attesting that the applicant was employed at the company from "6-10-99 until 4-3-02." The applicant also resubmits: a pay stub dated August 21, 1999, from Pedus Building Services, Inc., of undetermined location; an envelope addressed to the applicant and postmarked July 1, 1999; a letter from [REDACTED] House Cleaning Service, Addison, Texas, dated June 12, 2002, stating that the applicant worked for her from December 27, 1998 to January 2001; an unsigned letter dated June 12, 2002, from [REDACTED] stating that the applicant has resided at [REDACTED] [REDACTED] since November 30, 1998; and, copies of receipt notices from CIS dated in the year 2002.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821, 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 decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence and continuous physical presence during the requisite time periods. 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 record includes the Notice to Appear, issued at McAllen, Texas, placing the applicant in removal proceedings following his apprehension by the United States Border Patrol at or near Hidalgo, Texas, on May 20, 1999. The evidence of record indicates that the applicant has not met the statutory and regulatory requirements for continuous residence and continuous physical presence in accordance with in 8 C.F.R. § 244.2(b) and (c).

In addition, it is noted that the affidavit [REDACTED] of EFC, Inc., Carrollton, Texas, attesting that the applicant was employed at the company from "6-10-99 until 4-3-02," does not fully conform to the provisions of 8 C.F.R. § 244.9(a)(2)(i)(A) through (D). The timeframe specified in this affidavit also overlaps with the time period specified in the pay stub dated August 21, 1999, from Pedus Building Services, Inc., of undetermined location, and conflicts with the letter from [REDACTED] dated June 12, 2002, stating that the applicant worked for her from December 27, 1998 to January 2001. The letters

from [REDACTED] indicate that the applicant was in the United States in late 1998, while documents prepared by the applicant's former counsel indicate that the applicant first entered the United States on May 20, 1999. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and 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 (BIA 1988).

It is further noted that the record contains an outstanding Warrant of Removal/Deportation issued on June 23, 2003, at Harlingen, Texas, based on a final order of removal in absentia issued by the Immigration Judge. Further, the Form I-166, issued by the Interim Field Office Director, Detention and Removal, Harlingen, Texas, on August 12, 2003, indicates that the applicant was scheduled to appear for enforced departure to Honduras, on September 12, 2003.

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.