



U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[SRC 03 205 51333]

Office: VERMONT SERVICE CENTER

Date: JAN 03 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

PUBLIC COPY

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

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clear
invasion of

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 submits additional evidence and resubmits documents that had previously been entered into the record.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. 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 Citizenship and Immigration Services (CIS), on June 26, 2003.

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. See 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 August 22, 2003, 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 was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, stated that he is the child of an alien currently eligible to be a TPS registrant. The applicant submitted a photocopy of the Employment Authorization document (EAD) for Raul Maldonado, A94 382 958, indicating TPS approval and employment authorization under category A12, and valid from July 6, 2002 through July 5, 2003. The applicant also submitted photocopies of birth certificates, with English translations, for Raul Maldonado, and for himself. The applicant also provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on May 12, 2004. The director specifically noted that the applicant had based his eligibility for late initial registration upon being the child of an alien currently eligible to be a TPS registrant. The director noted, however, that the applicant had filed his initial TPS application more than 60-days after he turned 21 years of age, and therefore did not meet the definition of a child for immigration purposes.

On appeal, the applicant submits copies of: his father's EAD under Category A12, and valid from July 6, 2003 through January 5, 2005; his father's Social Security Card; his own initial Form I-821, Application for Temporary Protected Status, and Form I-765, Application for Employment Authorization; and, receipt notices for his June 26, 2003, TPS and employment authorization applications. The applicant also resubmits copies of his and his father's birth certificates with English translation. The applicant does not submit any statement on appeal.

The applicant submitted evidence in an attempt to establish his qualifying 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, Application for Temporary Protected Status, within the initial registration period. Although his father is a TPS registrant, the applicant did not file his TPS application within a 60-day period immediately following the expiration or termination of the qualifying condition under 8 C.F.R. § 244.2(f)(2)(iv) (listed above), in order to be considered for late initial registration. *See* 8 C.F.R. § 244.2(g). The applicant also did not submit evidence of the marriage between Raul Maldonado and the applicant's mother to establish the bona fide parental relationship. The applicant has not submitted evidence to establish that he has met any of the other 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 also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence and continuous physical presence during the requisite time periods. It is noted that the record includes a Notice to Appear dated September 22, 2000, issued at El Centro, California, following the applicant's apprehension by the United States Border Patrol at or near Calexico, California, on September 22, 2000. According to the records pertaining to that apprehension, the applicant told immigration officers that he had left Honduras on September 19, 2000, flew to Mexico, and traveled with his mother and friends into the United States. The applicant also stated that his father lived in New Jersey.

The applicant made no claim of having previously entered the United States. Further, on the TPS application the applicant, at Part 2, indicated his date of entry into the United States as "02-01-1998," while on Part 4, he indicated that he last entered the United States on "February 1, 2003." The applicant also certified under penalty of perjury that he had not previously been under immigration proceedings.

In addition, it is noted that letters from relatives in Honduras submitted as evidence of the applicant's residence in the United States in 1998 have little evidentiary value, as postmarked mailing envelopes containing specific information are not included. The letter dated June 4, 2003, from Rev. Jorge Estrada, [REDACTED] of God, Ventnor, New Jersey, does not fully conform to the regulatory provisions, and, therefore also has limited evidentiary value. In conclusion, the evidence of record reflects that the applicant entered the United States on September 22, 2000. The evidence does not, however, substantiate that the applicant resided in the United States prior to the September 22, 2000 entry, and that any absence was brief, casual or innocent. Therefore, the applicant has also failed to establish that he has met the provisions of 8 C.F.R. § 244.2(b) and (c) and the application must also be denied for these reasons.

Finally, it is noted that the record includes a Warrant of Removal, dated January 17, 2001, issued at El Centro, California, based upon the final order of the Immigration Judge, El Centro, California, granting the applicant voluntary departure to be effected on or before January 16, 2001, and stating that he is subject to removal if he fails to depart the United States. The record also includes documentation pertaining to a breach of bond, based upon the applicant's failure to surrender for removal. The records of CIS reflect that the applicant has been identified by Immigration Customs Enforcement (ICE) as an Absconder/Fugitive.

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.