

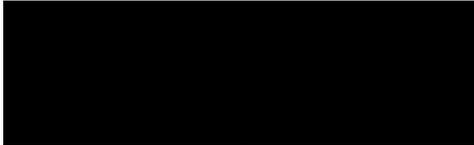
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**U.S. Citizenship
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Services**

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 05 2005

[EAC 01 269 51554]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the 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 director denied the application because the applicant failed to establish that he was eligible for late registration. The director also determined that the applicant failed to establish his continuous residence in the United States since December 30, 1998.

On appeal, the applicant submits a statement.

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 the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 24, 2001.

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).

The first issue in this proceeding is whether the applicant established his eligibility for late initial registration.

The record confirms that the applicant filed his initial TPS application after the initial registration period had closed. 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).

On October 30, 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 a letter from a case manager who assists homeless immigrants at St. Francis House, Boston, Massachusetts, assisting the applicant in requesting an extension to submit additional documentation, because his constantly changing living situation and job search resulted in his late receipt of the request for additional evidence.

Subsequently, in March 2003, the applicant submitted additional TPS and employment authorization applications, with fee waiver requests. In addition, the applicant provided photocopies of the following documentation: a character reference dated March 9, 2003, from the Senior Pastor, Elohim Christian Fellowship, Queens Village, New York; a notarized character reference from an acquaintance; a notarized statement that the applicant resided with his sister in Woodside, New York, from August 1991 to November 1999; another copy of his Honduran birth certificate, with English translation; a volunteer registration form and a certificate from the Root Cellar, Family Ministries, Portland, Maine, for the year 2001-2002; a certificate dated "3/9/2002" for courses in Christian doctrine; a certificate of baptism dated March 9, 2002 from Iglesia Adventista Manchester, a City of New York, Certificate of Marriage Registration, reflecting his marriage to [REDACTED] in New York, New York, on October 17, 2002; his Honduran passport issued by the Consulate General, New York, New York, on April 9, 2001; a fingerprint notification and worksheet for his fingerprints taken on November 28, 2001; receipt notices for his August 24, 2001 TPS and employment authorization applications; and, original pay stubs dated in 1995, 1996, 1997, and 1999.

The applicant, however, did not submit any evidence relating to his eligibility for late initial registration. Therefore, the director determined that the applicant had failed to establish he was eligible for late registration and denied the application on April 30, 2003.

On appeal, the applicant states that he would like CIS to take into consideration that he presented evidence that he is a national of Honduras, and that he has no negative record, as he respects the laws of the country. The applicant does not submit any additional evidence in support of the appeal.

The applicant previously 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. The applicant presented no evidence to substantiate that he had previously applied for TPS during 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.

The second issue in this proceeding is whether the applicant established his continuous residence in the United States since December 30, 1998.

Although the applicant was not requested to submit additional evidence to establish his continuous residence, in the April 30, 2003, denial decision the director stated that the applicant had not submitted sufficient evidence of his continuous residence as of December 30, 1998, and therefore, denied the application.

The documents submitted in response to the director's request for evidence included the items listed above. In addition, the record also includes photocopies of: numerous additional pay stubs dated in the years 2000 and 2001; a money transfer receipt dated January 13, 2000; and, an inter-agency referral form dated September 6, 2000, from Saint Francis House, Boston, Massachusetts, for smoking cessation.

While the applicant submitted evidence for the years 1995, 1996, 1997, and beginning again from June 1999, the record contains a gap during the portion of the requisite period from December 30, 1998 through June 1999. Consequently, the director's decision that the applicant failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c), will also be affirmed.

Beyond the decision of the director, for the reason discussed above, it must also be concluded that the applicant has failed to establish his continuous physical presence in the United States during the entirety of the requisite period, namely the gap between January 5, 1999 and July 1999. The application must also be denied for this reason.

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.