

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

MM



FILE: [REDACTED]
[SRC 03 206 54728]

Office: TEXAS SERVICE CENTER Date: JUL 05 2005

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
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 (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.

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 Citizenship and Immigration Services (CIS), on July 15, 2003.

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).

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 January 14, 2004, 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, submitted an affidavit dated February 21, 2004, from [REDACTED] attesting that the applicant is his nephew and came to live with him in September 1998. [REDACTED] stated that his brother, the applicant's father, made him the guardian of the applicant. Because the applicant was an unmarried minor, the uncle believed that the applicant was covered under his own TPS application. The applicant also provided photocopies of the following documentation:

1. The Honduran Birth certificate, with English translation, for [REDACTED]
2. The applicant's Honduran birth certificate, with English translation;
3. Receipt notices for the Form I-765, Application for Employment Authorization, for [REDACTED] [REDACTED] dated between August 10, 2000 and July 18, 2003;
4. A receipt notice indicating approval of the July 1, 1999 TPS application for [REDACTED] from June 17, 2000 to July 5, 2000;
5. Copies of the initial and annual TPS and employment authorization applications, with accompanying money orders, of [REDACTED]
6. The Employment Authorization documents (EAD) issued annually for [REDACTED] under Category A12; and,
7. The State of Florida Identification Card of [REDACTED] issued on June 3, 1996, with an expiration date of May 13, 2002.

It is noted that with the initial application, the applicant submitted: his Honduran birth certificate, with English translation; an unofficial identification card from an unspecified source; pay stubs dated in 1999; a letter dated January 15, 1999, from MoneyGram, Lakewood, Colorado; a letter dated April 21, 1999, from Asurion for MetroGUARD Subscribers; generic rent receipts for the period of "December 1998 to January 30/99," February, March and April of 1999, June and December of an illegible year, February 2000, and February and March of 2003; two MoneyGram money transfer receipts dated in June and July of 2001; two account summaries from Metro PCS dated April 19, 2003 and July 19, 2003; and, a court judgment dated November 5, 2002, indicating a fine and adjudication of guilt for the charge of No Driver's License, Citation [REDACTED]

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 8, 2004.

On appeal, the applicant states that he had been living with his uncle, who was his guardian, and submitted documentation establishing that his uncle was a TPS registrant. He believes this should make him eligible for TPS. The applicant does not submit any additional evidence in support of the appeal.

The applicant submitted evidence establishing that his uncle was an approved TPS registrant. However, this is not the criterion for establishing eligibility for late registration. 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, the applicant has failed to submit sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. It is noted that the pay stubs appear to have been altered. The letter from MoneyGram, Lakewood, Colorado is dated January 15, 1999, while the text of the letter indicates that the savings are based on a domestic fee comparison "as of 5/21/01." The rent receipts are generic. 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). The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

It is also noted that the applicant submitted an unofficial identification card from an unspecified source. While the applicant submitted a birth certificate, with English translation, he failed to submit sufficient evidence of his identity and nationality, such as a State-issued identification card or driver's license, or a national identity document from his country of origin bearing a photograph and/or fingerprint.

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.