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U.S. Citizenship  
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Services

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**MI**



FILE: [REDACTED]  
[SRC 04 066 54501]

Office: TEXAS SERVICE CENTER Date: **JUL 25 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.

*Cindy N. Gomez*  
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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

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 record reveals that the applicant filed his initial TPS application on January 5, 2004. On January 17, 2004, the applicant was requested to submit additional 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 in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The director concluded that the applicant had abandoned his application and denied the application on March 10, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

However, the record contains the applicant's timely response to the Notice of Intent to Deny, received by Citizenship and Immigration Services (CIS) on February 11, 2004. The denial due to abandonment, therefore, was made in error, and the appeal may be considered before the AAO.

On appeal, the applicant submits a statement and additional evidence. He also resubmits some documentation that had been previously 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 parole; 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 CIS, on January 5, 2004.

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 is eligible for late registration.

The record of proceedings confirms that the applicant filed his 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 January 17, 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 was also requested to submit evidence establishing his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. In response, the applicant provided copies of six generic rent receipts all dated in 1999, relating to his residence and physical presence in the United States.

As discussed previously, the director found that the applicant had not responded to the request for additional evidence and denied the application on March 10, 2004.

On appeal, the applicant states that he would like to be given "the opportunity [sic] to continue being legal in this country in which with a lot of difficulty [he has] lived here without having the opportunity [sic] of being employed and also given the chance to pay [his] taxes." The applicant states that he has lived in the United States since 1998 and has the correct information now about the need to send letters back to CIS. In support of the appeal, the applicant submits five generic rent receipts all dated in 1999, and six fill-in-the blank Western Union money transfer receipts dated between February and October 1999.

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), and the application must be denied for this reason.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on January 17, 2004, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted copies of seven generic rent receipts, all dated in 1999.

The director determined that the applicant had not responded to the request for additional evidence and denied the application.

On appeal, the applicant states that he has lived in the United States since 1998. He submits: an additional rent receipt dated in 1999; six Western Union money transfer receipts dated between February and October 1999; and resubmits some of the prior rent receipts.

It is noted that the rent receipts are internally inconsistent. There are two rent receipts, one dated "7-1-99" and another dated "6-1-99," both of which indicate they were for the same apartment number and for the same month of "1-6-99 to 1-6-30-99 [sic]." The copies of these receipts submitted on appeal bear receipt numbers, while the receipt numbers are not visible on the copies submitted earlier. In addition, other documentation included with the initial submission appears to have been altered. It is noted that some billing statements that are from the same company, dated in the same timeframe, list different account numbers. 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 record also includes generic receipts that cannot be directly linked to the applicant. Moreover, the applicant has not submitted any evidence covering the years 2000 through the filing date in 2004. It is also noted that the applicant's Honduran identification card indicates that it was issued to him on September 4, 2000, three years after his stated alleged date of entry into the United States.

It must be concluded that the applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. He 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 noted that the record contains a Federal Bureau of Investigation (FBI) fingerprint results report, reflecting the following charge(s):

- 1) On April 9, 2004, the applicant was arrested by the Miami Beach Police Department, and charged with a Municipal Ordinance Violation- Consume Sell Possession Alcoholic Beverage in Public Place.

The record does not contain the final court disposition of the charge(s) against the applicant. The charges must be addressed in any future proceedings before CIS.

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.