

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M1

FILE:

[Redacted]
[LIN 03 221 50039]

Office: Nebraska Service Center

Date:

JUN 24 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant had failed to establish his eligibility for late TPS registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial application [LIN 01 207 50754] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 12, 2001, after the initial registration period had closed. That application was denied on February 12, 2002, because the applicant failed to establish his eligibility for TPS late registration; his date of entry into the United States as of December 30, 1998; his continuous physical presence in the United States since January 5, 1999; and his continuous residence in the United States since December 20, 1998. The applicant did not file an appeal or motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on July 10, 2003. The director denied this second application [LIN 03 221 50039] on November 19, 2003, because the applicant failed to establish his eligibility for TPS late registration. The director also denied the application because the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on July 10, 2003. Since the initial application was denied on February 12, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 TPS 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 application with Citizenship and Immigration Services (CIS), on July 10, 2003.

The burden of proof is upon the applicant to establish that he or she 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 or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On August 21, 2003 and on October 9, 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 also was requested to submit evidence establishing his date of entry into the United States as of December 30, 1998, his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States from January 5, 1999. In response to the director's October 9, 2003 request, the applicant provided some evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States; however, he did not submit any evidence to establish his eligibility for late registration. The director determined that the applicant had failed to establish he was eligible for late registration. The director also determined that the applicant failed to establish that he entered the United States prior to December 30, 1998, and he had continuously resided in the United States since December 30, 1998. Therefore, the director denied the application on November 19, 2003.

On appeal, the applicant states that he came to the United States on June 6, 1995, and that he never left the United States. The applicant also states that he had used the assumed name of [REDACTED] until April 2003. The applicant also provides the following documentation along with his appeal: copies of an unsigned and undated Statement of Claimant or Other Person from the Social Security Administration reflecting the name of [REDACTED] and a copy of the applicant's earnings statement from Prestige Maintenance, Ltd. Dated July 15, 2003.

The first issue in this proceeding is whether the applicant is eligible for late registration. On appeal, the applicant submits additional evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. However, 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 TPS on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established his date of entry into the United States prior of December 30, 1998, and his continuous residence in the United States since December 30, 1998.

The copy of the statement from the Social Security Administration does not reflect the name of the applicant, nor is this document signed; thus, it has little, if any, evidentiary weight in these proceedings. Also, the copy of the applicant's earnings statement post-dates the beginning of the time period for entry and continuous residence in the United States. It is also noted that the applicant claims that he has used the name of [REDACTED]. A review of the record of proceedings reflects that the applicant submitted copies of his birth certificate and a copy of his Wisconsin Identification Card bearing the name of [REDACTED]. However, the applicant failed to provide any evidence to establish the legal use of his claimed name of [REDACTED]. As such, evidence provided by the applicant under the name [REDACTED] cannot be considered. Evidence of the use of two names may include official court documents registered with the proper civil authorities. Further, it is also noted that the applicant did not claim the use of any aliases on his applications for temporary protected status or employment authorization. The applicant has not submitted sufficient evidence to establish his date of entry into the United States prior to December 30, 1998, and his qualifying continuous residence in the United States since December 30, 1998. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS will also be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence during the requisite time periods. 8 C.F.R. § 244.2(b). Therefore, the application will also be denied for this reason.

An alien applying for TPS 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.