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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUN 29 2005
[EAC 03 190 51753]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 initial registration. The director also denied the application because the applicant failed to establish 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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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 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 June 4, 2003

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 July 17, 2003, the applicant was requested to submit evidence establishing his eligibility for late initial registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided documentation relating to his residence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 19, 2003.

On appeal, the applicant states that he doesn't have any relatives in the United States, and he wants to be able to work legally in the United States.

The applicant's statement is acknowledged; 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). 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 continuous residence in the United States since December 30, 1998.

As stated above, the applicant was requested on July 17, 2003, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted pay statements from [Unknown] Personnel Systems, Inc., city and state unknown, for the pay periods ending October 31, 1999, November 7, 1999, and December 5, 1999, and one pay statement from [...]kforce, Edison, New Jersey, for the pay period ending November 7, 1999.

The director concluded that the applicant had failed to establish his qualifying continuous residence in the United States during the requisite periods and denied the application.

On appeal, the applicant does not submit any additional evidence to establish his qualifying continuous residence in the United States during the requisite period.

The applicant has submitted pay statements reflecting his residence in the United States from October through December 1999, but he has not submitted any evidence to establish his qualifying continuous residence prior to October 1999. Further, the applicant's name, employee number, and social security number appear to have been typed onto the pay statement from [...]kforce. The applicant has not provided any explanation for this apparent alteration. 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 visa petition. It is incumbent on 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. (Comm. 1988).

Additionally, the record contains a Form I-213, Report of Deportable Alien, indicating that the applicant and his wife and son were apprehended by the United States Border Patrol on October 14, 1999 near Progreso, Texas. The applicant told the apprehending officers that he and his family left Honduras on or about September 11, 1999, and crossed the border into the United States on October 14, 1999. The applicant informed the officers that he was on his way to Los Angeles, California, to seek employment.

The applicant indicated on the Form I-821, Application for Temporary Protected Status, that he first entered the United States in September 1998. The applicant has not provided any explanation for this contradiction in his claimed date of entry into the United States. The fact that the applicant has not submitted any evidence of continuous residence prior to October 1999 further supports a conclusion that he had not resided in the United States prior to his apprehension by the United States Border Patrol on October 14, 1999.

The applicant has not established continuous residence in the United States since December 30, 1998. He 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 on this ground will also be affirmed.

Beyond the decision of the director, the applicant has also failed to establish continuous physical presence in the United States since January 5, 1999. Therefore, he has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b), and the application also must also be denied for this reason.

It is noted that an Immigration Judge in Harlingen, Texas, ordered the applicant deported to Honduras in absentia on April 20, 2000. The record contains a Form I-166 notice ordering the applicant to report to the Port Isabel Service Processing Center in Los Fresnos, Texas, on July 20, 2000, to be deported to Honduras. The applicant failed to appear to be deported as ordered. The record contains a Form I-205, Warrant of Removal/Deportation, that is still outstanding.

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.