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U.S. Citizenship
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Services

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FILE: [REDACTED]
[SRC'02 225 56501]

Office: TEXAS SERVICE CENTER Date: **MAR 10 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, on January 27, 2003. The applicant filed a late appeal that was treated as a motion to reopen by the service center director. On October 7, 2003, the service center director granted the motion to reopen and requested additional evidence from the applicant. The applicant responded on October 28, 2003, to the request for additional evidence. The service center director again denied the application on November 4, 2003. The applicant then filed a timely appeal on December 1, 2003, that is now before the Administrative Appeals Office (AAO). The appeal will be dismissed, and the previous denial by the service center director will be affirmed.

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, Texas Service Center, denied the application on January 27, 2003, because the applicant failed to establish he was eligible for late registration. Following the reopening of the case, the service center director subsequently denied the application again on November 4, 2003, because the applicant had not established his continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant provides a statement and additional evidence.

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 Citizenship and Immigration Services (CIS), on July 1, 2002.

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 December 16, 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 director noted that the applicant did not qualify as a child of an alien currently eligible to be a TPS registrant, because he was already aged 21 when he applied. The applicant, in response, provided a photocopy of a generic passport page "26" reflecting a stamped entry into the United States as a B-2, visitor for pleasure, at Miami, Florida, dated July 25, 1999, with validity through January 24, 2000.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on January 27, 2003.

On appeal, the applicant stated that he entered the United States in 1996 with a visa. In support of the appeal, the applicant submitted photocopies of Employment Authorization documents (EAD) for: [REDACTED] under Category C19, with validity from October 24, 2002 through July 5, 2003; and [REDACTED] under Category A12, with validity from October 23, 2001 through July 5, 2002. Notations made by an unknown source on the photocopies indicate that these are the applicant's parents. The record, however, does not contain a birth certificate verifying the names of the applicant's parents. The applicant also submitted copies of pages 15 and 16 of his Honduran passport, indicating that he held a multiple entry B1/B2 visitor's visa valid from May 9, 1996 through November 9, 1996, and reflecting an entry stamp dated June 3, 1996, at Miami, Florida.

The service center director considered the late appeal as a motion to reopen, and on October 7, 2003, granted the motion to reopen, finding that the applicant was eligible for late registration as the child of an alien currently eligible to be a TPS registrant, and that he, therefore, had overcome the basis for the original denial of his TPS application. The director also requested additional evidence in order to determine the applicant's eligibility for TPS. The applicant was requested to submit evidence establishing his continuous physical presence in the United States since January 5, 1999. In addition, the director noted that the applicant's Honduran identification card was issued on June 26, 2000, and suggested that he had not been in the United States during that time. The applicant was also requested to submit evidence and an explanation regarding any departure from the United States. Finally, the applicant was informed that he would be scheduled for required fingerprinting.

The applicant, in response, submitted a statement that during the years 1996, 1997, 1998, and 1999, he "was underage" and most of the documentation was in his father's name. The applicant stated that he was accepted into the Miami-Dade Community College in September 1999, but because tuition was too expensive, he returned to Honduras to study at Universidad Autonoma de Honduras (UNAH) in the year 2000. He states that he later decided to return to the United States because of his mother's health problems. He states that his family has been granted TPS and that he seeks to be useful to his community by becoming a medical professional, and asks for consideration of his case. The applicant also submitted the following documentation:

1. An undated letter from Mr. [REDACTED] stating that the applicant worked as an apprentice in 1997, 1998, and 1999 for his company, Stallion Painting and Wallpapering Company, Naples, Florida;
2. A letter dated October 20, 2003, from [REDACTED] unspecified title, Bank of America, Naples, Florida, stating that the applicant and his father held an account since October 19, 1999;
3. A letter dated September 30, 1999, from Miami-Dade Community College, Miami, Florida, provisionally admitting the applicant for the term to begin May 8, 2000;
4. His photo identification card, Universidad Nacional Autónoma de Honduras, dated May 7, 2000; and,
5. NationsBank cards and deposit slip for the applicant and his father dated October 2002.

The director determined that the applicant had failed to establish his continuous residence and continuous physical presence during the requisite periods and denied the application on November 4, 2003.

On appeal, the applicant states: "I have truly been living in this country since 1998." He asks that he be given "the opportunity to continue being legal in this country in which [sic] a lot of difficulty [he has] lived here having a better opportunity of being employed and also given the chance to pay taxes [sic]." In support of the appeal, the applicant submits photocopies of the EAD for: [REDACTED], under Category A12, with validity from July 5, 2003 through January 5, 2005; [REDACTED] under Category A12, with validity from July 16, 2003 through January 5, 2005; [REDACTED] under Category A12, with validity from July 19, 2003 through January 5, 2005; [REDACTED] under Category A12, with validity from July 16, 2003 through January 5, 2005; and, their corresponding Social Security Cards.

The AAO does not concur that the applicant had established that he was eligible for late registration as the child of an alien currently eligible to be a TPS registrant. The applicant's date of birth is given as March 4, 1981. While the applicant's parents appear to be TPS registrants, pursuant to 8 C.F.R. § 244.2(g), an 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. The applicant turned 21 years of age on March 4, 2002, and therefore needed to file his TPS application by May 2002; the applicant however, did not file his application until July 2002. He, therefore, has not established that he has met the criteria for late registration under the provisions of 8 C.F.R. § 244.2(f)(2) and (g), and the application must be denied for this reason.

It is noted that the record contains another TPS application filed on July 11, 2003, in which the applicant checked the box indicating that this is an initial application. This subsequent application was denied on January 9, 2004, for the applicant's failure to establish his eligibility for late registration.

The applicant also has failed to establish 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 applicant stated that he departed the United States to attend a university in Honduras in the year 2000, and submitted identification from the Honduran university. The applicant did not specify when and in what manner he again returned to the United States. The applicant has not submitted evidence to establish that his departure was brief, causal, innocent, and otherwise met the requirements under 8 C.F.R. § 244.1. It is also noted that in response to first notice of intent to deny, the applicant submitted page "2" of a passport. This page reflects an entry into the United States as a B-2, visitor for pleasure, at Miami, Florida on July 25, 1999, with authorization to remain through January 24, 2000. If established that this document belongs to the applicant, it would further indicate that the applicant had not met the requirements for continuous residence and continuous physical presence in the United States during the specified dates. This passport page, however, does not indicate a passport number, name, visa, or other

identifying information to link the page to the applicant. Another photocopy of a passport page indicates a departure from Honduras on April 14, 2000, with no corresponding entry identified. The applicant also indicates that he is submitting letters from the Honduran Embassy and the Director of CIS; however, no such letters are included in the record. It is noted that the applicant's statement given on appeal, that he has "truly been living in this country since 1998" conflicts with the applicant's other statements that he returned to Honduras and attended university. Further, the only evidence of record reflecting the applicant's presence in the United States prior to 1999 consists of the passport stamp of January 3, 1996, and the employer letter from Mr. [REDACTED]. It is noted, however, that Mr. [REDACTED] letter has limited evidentiary value; it does not conform to the regulatory provisions of 8 C.F.R. § 244.9(a)(2)(i). Because he has not met the criteria described in 8 C.F.R. § 244.2(b) and (c), the application must also be denied for these reasons.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed, and the previous denial by the service center director is affirmed.