



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: TEXAS SERVICE CENTER

DATE: OCT 31 2005

[SRC 03 203 55016]

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 for

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 claims to be 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. The applicant does not submit any additional evidence in support of the appeal. It is noted that on the Form I-290B, Notice of Appeal, the applicant checked all of the boxes, indicating that he: was not submitting additional evidence; was submitting evidence with the appeal form; would be submitting additional evidence or a brief within 30 days; and, that he needed additional time to submit evidence or a brief. To date, additional evidence has not been received, and the record will be considered complete.

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 September 27, 2003, 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 physical presence in the United States since January 5, 1999. In addition, the applicant was requested to submit photo identification, such as a State-issued driver's license or passport. In response the applicant submitted a State of Florida Learner License issued on October 1, 2003, and two earnings statements from Steiner Corporation, of an unspecified location, dated January 20, 1999 and January 30, 1999. It is noted that the applicant had initially submitted evidence including a Honduran birth certificate, with English translation, and two earnings statements from Ultra-Rite Car Wash, of an unspecified location, dated "08/03/98" and "06/30/98."

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on November 10, 2003.

On appeal, the applicant states both that he has had TPS before and that ever since he applied he has not received any response regarding his case, or any request for additional evidence. He does not submit any additional evidence that supports these assertions.

The applicant previously submitted evidence in an attempt to establish his qualifying continuous residence and continuous 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 presented no evidence to substantiate that he had previously applied for TPS during 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 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. The earning statements appear to have been altered; name and dates appear to have been changed, and the year-to-date total earnings is indicated on the January 20, 1999 statement as \$1608.33, while the year-to-date total on the later January 30, 1999 statement from the same company is only indicated as \$335.67. In addition, there is no verifiable information about the company or the applicant on any of the earnings statements. 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, also 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.

In addition, subsequent to the filing of the appeal, the Federal Bureau of Investigation (FBI) fingerprint results report pertaining to the applicant's fingerprints, processed by the FBI on February 24, 2004, was entered into the record.

The FBI fingerprint results report, contained in the record of proceeding, reflects the following:

1. On March 22, 1993, under the name of [REDACTED] the applicant was arrested by the Sheriff's Office, Houston, Texas, and charged with CHARGE 1-ASSLT BI INJURY CHILD. The report notes the case was "turned over to Prosecutor;"
2. On September 11, 1996, under the name [REDACTED], the applicant was arrested by the Sheriff's Office, Houston, Texas, and charged with:
CHARGE 1-AGG ASLT W/ DEADL
CHARGE 2-AGG ASLT
3. On March 17, 1998, the applicant was arrested by police, Chasefield, West Beeville, Texas, and charged with:
CHARGE 1- DWI-1
CHARGE 2- AGG ASLT-1
4. Supplemental court data indicates:
CHARGE- DWI-1, Sentence Deported 11/24/99
CHARGE – AGG ASLT-1, Sentence Deported 11/24/99

These criminal charges may have bearing on the applicant's eligibility for TPS, and on his admissibility. It is noted that the records of CIS reflect that the applicant was deported on November 24, 1999, under the record number [REDACTED]. These charges must be addressed in any future proceedings.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.