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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

SEP 30 2005

[SRC 04 107 54394]

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, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated 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. The director noted that the applicant had failed to submit a copy of his current driver's license and photo identification or any national identity document from his country of origin bearing photo and/or fingerprint as requested. The director also determined that the applicant had failed to establish his continuous physical presence in the United States during the requisite time period.

The director noted that the applicant had only submitted evidence for the year 1999.

On appeal, the applicant states that if he had known, he would have filed his papers in a timely manner. The applicant further states that he wants to live in this country in a legal status and that he does not want to lose his opportunity for employment. The applicant resubmits a copy of his birth certificate along with an uncertified English translation, resubmits a copy of a Form I-766 Employment Authorization Card, For [REDACTED] in valid from May 31, 2003 to January 5, 2005 and copies of two Forms I-766 for [REDACTED] valid from October 20, 2000 to July 5, 2001 and from January 23, 2003 to July 5, 2003 along with additional documentation in support of his claim.

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.

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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed his application with Citizenship and Immigration Services (CIS), on March 3, 2004.

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).

Upon initial submission, the applicant submitted a copy of his birth certificate along with an uncertified English translation, a copy of a Form I-766, Employment Authorization Card, for a person named [REDACTED] valid from May 31, 2003 to January 5, 2005, and copies of four uncertified certificates. His certificates are for perfect attendance in the month of September 1998, first place in a spelling bee on October 15, 1998, a world's best speller award awarded on November 3, 1998 and a basketball camp completion certificate awarded December 2, 1998. None of the certificates specify where they were awarded.

On April 6, 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). He was also requested to submit evidence to show he had been physically present in the United States from January 5, 1999 to the date of filing his application and a copy of his driver's license and a photocopy of his passport or national identification card. In response to the director's request, the applicant submitted a copy of his birth certificate along with an uncertified English translation and seven uncertified certificates. His certificates are a diploma for fitness training dated May 2, 1999, a middle school marching band membership award indicating his membership since January 1999, a science project completion certificate dated May 15, 1999, a middle school perfect attendance award for 1999, a diploma for art class completion dated June 15, 1999, a diploma for completing a computer course awarded on March 10, 1999 and a basic reading completion certificate dated June 15, 1999. None of the certificates specify where they were awarded. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on April 26, 2004.

It is noted that on his TPS application, the applicant indicates that he entered the United States on February 20, 1998 without inspection but that his current status is that of an F-1 nonimmigrant student. The record contains no documentary evidence to show that the applicant has been or remains in nonimmigrant student status since his purported entry into the United States in 1998, or if and when that status terminated. To be eligible to apply under the late initial registration provisions of TPS, the applicant must demonstrate that he filed for TPS no later than 60 days from the termination of his status as a nonimmigrant student. He has not done so.

The applicant has submitted copies of three Forms I-766, Employment Authorization Card, for [REDACTED]. The applicant has provided a copy of his birth certificate along with an uncertified English translation. However, a birth certificate without a certified English translation combined with employment authorization cards is not sufficient evidence to establish that Ms. [REDACTED] is the applicant's mother or that he is the child of an alien currently eligible to be a TPS registrant.

The applicant has 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 Application for Temporary Protected Status within the initial registration period. The applicant has not submitted sufficient evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed for this reason.

In this case, the director objected that the applicant had not submitted a copy of his current driver's license. Applicants must submit all documentation as requested by CIS. If any required documentation is unavailable,

an affidavit or other credible evidence may be submitted. The applicant has not provided his driver's license or documentation as to its unavailability as required by the regulations at 8 C.F.R. § 244.9(a). Additionally, it is noted that the applicant has provided insufficient evidence to establish his continuous residence and continuous physical presence during the required time period. 8 C.F.R. § 244.2 (b) and (c). Therefore, the director's decision is affirmed for these additional reasons.

Additionally, it is also noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. He has provided a copy of his birth certificate along with an uncertified English translation. However, a birth certificate, even with a certified translation, does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore the application shall be denied for this additional reason.

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.