



U.S. Citizenship
and Immigration
Services

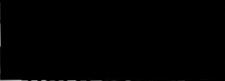
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FILE:



Office: TEXAS SERVICE CENTER

Date: JUL 03 2006

[SRC 03 218 54914]

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.

for Robert P. Wiemann, Chief
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 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 registration and had not submitted all of the requested information.

On appeal, the applicant requests that he be given the opportunity to continue to stay in the United States in a legal status. The applicant resubmits documentation outlined by the director in her determination.

Section 244(c) of the Act, and the related regulations at 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.

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 August 5, 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 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 her 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 February 4, 2004, the director advised the applicant that the birth certificate that he had submitted was incomplete because the signature of the issuing authority was missing from the copy. The applicant was directed to provide another copy of his birth certificate and other government issued document from his country of origin to prove nationality. The applicant was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation

relating to his residence and physical presence in this country. However, he did not submit a complete copy of his birth certificate or any other government issued document from Honduras.

The regulations at 8 C.F.R. § 244.9, state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

(i) Passport;

(ii) Birth certificate accompanied by photo identification;
and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. The applicant has provided a copy of his birth certificate along with an English translation. However, as determined by the director, the birth certificate is incomplete because the signature of the issuing authority is missing from the document. Additionally, even had the birth certificate been a complete document, it alone does not establish nationality. Although requested by the director, the record does not contain any photo identification or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application shall be denied for these reasons.

On appeal, the applicant resubmitted 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. Absent the submission of an

acceptable birth certificate, the applicant has not established that he is the child of an alien currently eligible to be a TPS registrant. It is determined that he has not submitted any 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 application is denied for this additional reason.

The applicant claims that he entered the United States in 1998, and provided documentation to show that he was in continuous residence in this country since December 30, 1998, and continuously physically present in this country since January 5, 1999. However, the person he states is his mother, (who has been approved for TPS), indicated on her Forms I-821, Application for Temporary Protected Status, filed on May 13, 1999 and on July 18, 2001, that the applicant was residing in Honduras when those applications were submitted. While regulations allow the spouse or child of a TPS beneficiary to file an application after the initial registration period, these regulations do not relax the requirements for eligibility for TPS. In this case, the applicant is still required to meet the continuous residence and continuous physical presence requirements. Beyond the decision of the director, it is determined 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 application shall be denied for these additional reasons.

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.