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U.S. Citizenship
and Immigration
Services

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FILE:

[SRC 01 256 54766]

[SRC 02 225 50938, *Appeal*]

Office: TEXAS SERVICE CENTER

Date: MAY 30 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC). The applicant filed the instant appeal that is now before the Administrative Appeals Office (AAO). While this appeal was pending, the applicant filed a letter designated as a motion to reopen. The TSC Director issued a decision dated October 3, 2003, dismissing the motion because the applicant had not overcome the finding that he was eligible for late initial registration. Because the initial appeal was still pending, prior to the October 2003 decision, the matter has been forwarded to the AAO to address the applicant's initial right of appeal. The entire record, including evidence subsequently submitted under the motion to reopen, will be reviewed in consideration of this appeal. The appeal will be dismissed.

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 denied the application because the applicant failed to establish that he was eligible for late registration.

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 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, 2007, 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 this initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 8, 2001.

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).

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. 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 March 6, 2002, the director requested the applicant submit additional evidence to establish his eligibility for late initial registration as set forth in 8 C.F.R. § 244.2(f)(2). The director also requested that the applicant submit additional evidence 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. In response, the applicant submitted a response that did not address his eligibility for late initial registration.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 26, 2002.

On appeal, the applicant states that the Honduran Consulate in New Orleans told him that TPS applications would be accepted until August 31, 2001, and provided the forms. The applicant also states that he is engaged to a United States citizen and inquired about forms that may be filed in that circumstance. The applicant did not submit additional evidence in support of this appeal.

The applicant 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 that for Hondurans ended on August 20, 1999. The extension of TPS for the period in 2001 was for Honduran nationals who had previously applied for TPS during the initial registration period, and for those who may not have previously applied but who met the additional conditions as required under 8 C.F.R. § 244.2(f)(2) and (g) that allow for late initial registration. It is noted that the record reflects that the applicant was a minor at the time of the initial registration period; he did not, however, provide any evidence that either of his parents was an alien currently eligible to be a TPS registrant at the time of 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 not established his continuous residence in the United States since December 30, 1998, and his physical presence in the United States since January 5, 1999. Some of the documentation has been altered. For example, the printer's edition of some of the money transfer forms indicate copyright as "© 2000," while the handwritten receipts indicate those documents were prepared in 1998 and 1999. 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). Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

The record contains a copy of the applicant's Honduran national identity document. Under the provisions of 8 C.F.R. § 244.9(a)(1)(iii), this is sufficient to establish the applicant's identity and his nationality. It is noted, however, that the document issued on October 17, 1998, bears the applicant's name as "Fausto Jesus Alvarez Flores," rather than the spelling as indicated on his birth certificate.

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.