



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

DATE: FEB 16 2007

[WAC 05 104 82204]

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:

[REDACTED]

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, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be a 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 also found that the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant states that he filed as a late registrant while his court case is on appeal with the 9th Circuit and that he has maintained continuous domicile in the United States since he first entered the country around November 2, 1998, which was early enough to meet the qualifying residence and continuous physical presence requirements for Hondurans seeking TPS status.

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 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.

Honduran nationals applying for TPS 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 period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his TPS application with Citizenship and Immigration Services (CIS) on January 5, 2005, which was after the initial registration period had closed.

The burden of proof is upon the applicant to establish that he or she meets the above requirements for TPS. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (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 or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. See 8 C.F.R. § 244.9(b).

Since the applicant did not file his application during the initial registration period, the first issue in this appeal is whether the applicant is eligible for late registration. To qualify for late registration, the applicant must provide

evidence that during the initial registration period he met at least one of the criteria enumerated in 8 C.F.R. § 244.2(f)(2) above.

In a notice of intent to deny (NOID) issued on February 5, 2006, the service center requested the applicant to submit evidence to establish, among other things, his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). No such evidence was submitted with the applicant's response to the NOID, which was filed on February 23, 2006. In his decision denying the application, dated May 1, 2006, the director determined that the applicant had failed to establish his eligibility for late registration.

On appeal the applicant submits an order from the United States Court of Appeals for the Ninth Circuit, dated May 2, 2006, which grants the applicant and other family members a stay of removal pending the resolution of any and all TPS applications they have filed.¹ This document does not meet any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). In particular, it does not satisfy the criterion at 8 C.F.R. § 244.2(f)(2)(i) because it did not give the applicant relief from removal during the initial TPS registration period for Hondurans in 1999. Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue on appeal is whether the applicant has established 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 the NOID issued on February 5, 2006, the service center listed and described the types of documentation needed to demonstrate continuous residence and physical presence. In response to the NOID the applicant submitted immunization records, school report cards, a school identification card, and federal income tax returns filed by his parents, which show that the applicant has resided in San Jose, California, since the summer of 2000. As no evidence was submitted to demonstrate that the applicant was a continuous resident of the United States since December 30, 1998, and continuously physically present in the country since January 5, 1999, the director's decision of May 1, 2006 found the applicant ineligible for TPS on these grounds as well.

On appeal, the applicant asserts that he entered the United States on or about November 2, 1998, and has been domiciled in the United States since then. According to the applicant, therefore, he meets the TPS requirements of continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, notwithstanding a two-day trip to Mexico with his family in July 2000 which resulted in their arrest when they returned to the United States. The only pertinent evidence submitted in support of the appeal is a declaration purportedly prepared by the applicant's mother [REDACTED] stating that she first entered the United States on November 2, 1998, and that she has resided in the country continuously since that date. As the declaration is neither signed nor dated by the applicant's mother, it has no evidentiary weight. Nor is it supplemented by any other documentation showing that the applicant or his mother were present in the United States between November 1998 and July 2000. Simply going on record without supporting documentation

¹ The record includes a Warrant of Removal/Deportation issued for the applicant by U.S. Immigration and Customs Enforcement (ICE) in San Francisco on November 24, 2004, as well a document stamped by ICE on April 12, 2005, stating that the applicant and his family failed to appear at a designated address in San Francisco for removal from the United States on April 6, 2005.

does not satisfy the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Thus, there is no evidence in the record that establishes the applicant's presence in the United States as early as November 2, 1998. As far as the record shows, the applicant first entered the United States on July 24, 2000, the date of Form I-213 (Record of Deportable / Inadmissible Alien) prepared by a border patrol agent in Texas who reported that the applicant waded across the Rio Grande that day and was apprehended, along with other family members and friends from Honduras, near Laredo, Texas. The report states that the applicant, eleven years old at the time, was released on his own recognizance for humanitarian reasons. As previously discussed, documentation submitted in response to the NOID shows that the applicant settled with his family in San Jose, California, in the summer of 2000, and has resided there continuously since then. Since the record does not establish the applicant's continuous residence in the United States since December 30, 1998, or his continuous physical presence in the United States since January 5, 1999, the applicant does not satisfy the TPS qualifying criteria described in 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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 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.