



U.S. Citizenship
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Services

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FILE: [REDACTED]
[SRC 99 213 52768]

Office: California Service Center

Date: NOV 06 2007

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated 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 record reveals that the applicant filed an initial TPS application on June 30, 1999, under CIS receipt number SRC 99 213 52768. The director denied the application on August 12, 2006, because the applicant failed to establish eligibility for late initial registration for TPS, his continuous residence and his continuous physical presence in the United States, and his nationality and identity. The director noted that the applicant failed to respond to a February 5, 2006 notice of intent to deny which was mailed to the applicant's last known address and was not returned as undeliverable.

On appeal, counsel does not submit a brief. However, counsel submits additional evidence.

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 as 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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence 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, 2009, 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 first issue in this proceeding is whether the applicant filed his TPS application within the registration period.

The record reveals that the applicant filed his application on June 30, 1999, within the initial registration period. Therefore, the director's decision to deny TPS for this reason is withdrawn.

The next issue in this proceeding is whether the applicant has established the requisite continuous residence and continuous physical presence requirements.

The record of proceeding contains sufficient evidence, including documents, receipts, and various correspondence, which cumulatively establishes the applicant's continuous residence since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999, to the date of filing. Therefore, the director's decision to deny TPS for these reasons also is withdrawn.

The next issue in this proceeding is whether the applicant has established his identity and nationality.

The applicant has not submitted sufficient evidence to establish his nationality and identity. The applicant has furnished a copy of a birth certificate and English translation; however, he has not submitted a national identity document from his country bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1). Therefore, the director's decision to deny the application on this ground is affirmed.

Beyond the decision of the director, the applicant is ineligible for TPS as the applicant failed to submit final court dispositions for five arrests (detailed below). It is noted that with his initial TPS application, the applicant submitted a Police Clearance from Houston Police Department which states that: 1) On April 4, 1992, the applicant was charged with: 'PUBLIC INTOXICATION-DRUNK.' The applicant was fined \$120.00; and, 2) On October 3, 1992, the applicant was charged with: 'PUBLIC INTOXICATION-DRUNK.' The applicant was fined \$95.00. However, on March 16, 2004, the director specifically requested that the applicant submit final court dispositions, by May 15, 2004, for four arrests, on January 15, 1987, January 27, 1987, September 2, 1989, and April 27, 1996. In response, the applicant submitted photocopies of a Complaint / Arrest Affidavit, filed on April 28, 1996, and related charging documents; and a police record summary from the San Francisco Police Department, and a letter from the San Francisco District Attorney, dated April 28, 2004, stating that no charges were filed for the September 2, 1989 arrest. However, the applicant failed to submit any of the requested court dispositions for the remainder of the arrests.

The applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with registration application, reflects that:-

- 1) On January 15, 1987, the applicant was arrested by the Police Department, San Francisco, California, and charged with, Charge 1: "VANDALISM/UNDER \$1000," a misdemeanor;
- 2) On January 27, 1987, the applicant was arrested by the Sheriff's Office, Redwood City, California, and charged with, Charge 1: "PETTY THEFT," a misdemeanor;
- 3) On September 2, 1989, the applicant was arrested by the Police Department, San Francisco, California, and charged with, Charge 1: "BURGLARY," a felony; and, Charge 2: "RESISTING PO," a felony;
- 4) On April 27, 1996, the applicant was arrested by the Miami Dade Police Department, Miami, Florida, and charged with, Charge 1: "AGGRAV BATTERY," a felony; and, Charge 2: "THROW DEAD MISL OCC DWELL," a felony; and,
- 5) On June 13, 2004, the applicant was arrested by the Broward County Sheriff's Office, Broward County, Florida, and charged with, Charge 1: "DUI ALCHOL OR DRUGS IST OFFENSE," a misdemeanor. The court disposition reveals that the court withheld adjudication, on a nolo contendere plea, of "PERS/INJ/PROT/INS REQUIRE."

It is noted that the final court dispositions for the arrests on January 15, 1987, on January 27, 1987, and on April 27, 1996, are not in the record of proceeding. The applicant is, therefore, also ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the application must also be denied for this additional reason.

CIS must address these arrests (described above) and any convictions in any future proceedings.

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.