



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 04 2006

[EAC 06 245 73904]

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 Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant entered the United States in 1989. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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, 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.

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. 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 January 5, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record reveals that the applicant filed his initial application for TPS on July 8, 2002 under Citizenship and Immigration Services (CIS) receipt number SRC 02 223 54335. The director denied that application on April 7, 2003 because the applicant failed to establish his eligibility for late initial registration for TPS. The record shows that the applicant filed this application on June 2, 2006.

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 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. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding 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 from January 5, 1999 through August 20, 1999, 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 the late initial registration. 8 C.F.R. § 244.2(g).

On December 1, 2006, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set-forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided evidence in an

attempt to establish continuous residence and continuous physical presence during the qualifying period. He did not present evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant entered the United States in 1989. According to counsel, the applicant entered the United States near Phoenix, Arizona and presented a valid passport. Counsel claims that the applicant was admitted at that time but was not given a Form I-94, Arrival-Departure Record nor was an entry stamp affixed to his passport. Counsel further states that the applicant did not know he should have received a Form I-94. The applicant also submits evidence in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application within 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 conclusion that the applicant failed to establish his eligibility for late registration will be affirmed.

The second and third issues in this proceeding are 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.

The applicant was requested on December 1, 2006 to submit evidence establishing his eligibility for late initial registration. In response, the applicant submitted statements from [REDACTED] and [REDACTED]

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits statements from [REDACTED] and [REDACTED]

[REDACTED] states that he has known the applicant since 1995. However, he does not provide his address nor state where he knew the applicant or even if he was acquainted with him in the United States. Mr. [REDACTED] states that he has known the applicant since 1989 and that the applicant has lived in his house since then. According to [REDACTED], the applicant lived in his house rent-free in return for performing many tasks around the house. However, his statement, which is dated February 5, 2003, indicates his address and the address where the applicant lived, as [REDACTED] Ocala, Florida. The applicant stated on his first TPS application that he resided in Durham, North Carolina, and he did not provide an address in Ocala, Florida until he filed the second TPS application on June 2, 2006. N. [REDACTED] and [REDACTED] state that they have known the applicant since 1990. [REDACTED] General Manager for Latinos Y Mas, Inc. stated that he has known the applicant since 1990 and that the applicant has done some work around and in his home. [REDACTED] in a statement sworn to on December 21, 2006 states that he has known the applicant for three years. [REDACTED] states that he has known the applicant since 2002. The affiants therefore can only attest to the applicant's presence in the United States subsequent to the qualifying entry dates to establish continuous residence and continuous physical presence. Furthermore, these statements have little evidentiary weight or probative value and they are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

As stated above, counsel states that the applicant entered the United States in 1989 at or near Phoenix, Arizona where he presented his passport and was admitted without a Form I-94 or an entry stamp in his passport. The applicant also submits a personal affidavit in which he restates this claim. According to the applicant he entered the United States on or about January 14, 1989. However, the applicant was arrested on November 6, 2007 and during an interview admitted that when he entered the United States he was not then admitted or paroled after

inspection by an Immigration Officer. The applicant made no further claim to lawfully entering the United States. This directly contradicts the claim that the applicant presented his passport when he entered the United States.

It is noted that the applicant was issued a *Licencia Internacional Liviana Para Conducir Vehiculo Automatriz*, in Honduras on October 30, 2000 which contradicts his claim to have continuously resided in the United States since 1989. These discrepancies have not been satisfactorily explained. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has not submitted sufficient 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. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

It is noted that the applicant was removed from the United States on January 11, 2008.

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.