

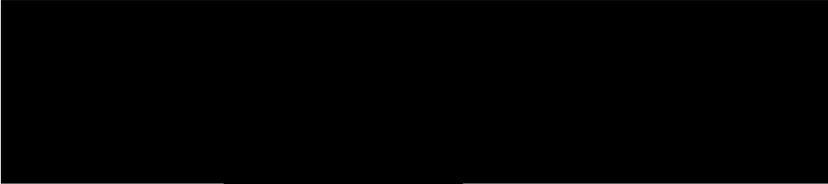


U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 10 2008

[EAC 06 224 72032]

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

The applicant is stated to be 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 he was eligible for late registration. The director also denied the application because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel asserts the applicant's eligibility for TPS and submits some additional documentation.

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, 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.

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 in the United States since January 5, 1999.

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with CIS on May 10, 2006.

The director denied the application on December 1, 2006, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States, as well as his eligibility for TPS late registration. The director noted in her decision that the applicant entered the United States without inspection on March 1, 1999, at Brownsville, Texas.

On appeal, counsel asserts that the applicant is eligible for TPS because he is a child of an alien currently eligible for TPS. Counsel also provides the following documentation: a copy of an Employment Authorization Document (EAD) of the applicant's mother, [REDACTED] and [REDACTED] a copy of the applicant's birth certificate along with an English translation indicating that he was born in Honduras on February 4, 1988; a copy of a Certificate of Accomplishment from an elementary school in Miami, Florida, dated June 8, 2000; a copy of a business card from La Fama Supermarket #1; and a copy of a hand-written receipt dated December 17, 2006.

The first issue in this proceeding is whether the applicant has established his eligibility for TPS late registration.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he satisfied at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The applicant's mother's record, under A94 859 308, shows that her TPS application was denied on March 26, 2004, and a subsequent appeal was dismissed by the AAO on July 20, 2005. Since his mother has never been granted TPS, the applicant is not eligible for late registration under 8 C.F.R. § 244.2(iv) as the child of TPS-eligible alien. Consequently, the director's conclusion that the applicant failed to establish his eligibility for TPS late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his qualifying continuous residence and continuous physical presence in the United States.

A review of the record of proceedings shows that the applicant was apprehended, along with his mother, by the United States Border Patrol on March 12, 1999, near Sarita, Texas. The applicant's mother stated to the agents that she and her three children left Honduras on January 1, 1999, and entered Mexico on February 1, 1999, en route to the United States. Therefore, the applicant could not have continuously resided in the United States since December 30, 1998, and been continuously physically present in the United States since January 5, 1999, as required under 8 C.F.R. § 244.2(b) and (c). Therefore, 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.

It is noted that the applicant is subject to a removal order issued by the District Director in Harlingen, Texas, on December 2, 1999.

ORDER: The appeal is dismissed.