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**U.S. Citizenship
and Immigration
Services**

ML

[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER DATE: **JAN 16 2008**

[WAC 05 146 73008]
[EAC 07 176 51298 MOTION]

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: SELF-REPRESENTED

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 Director, California Service Center, denied the application. The Chief, Administrative Appeals Office (AAO), dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The case will be reopened and the appeal will again 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 he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

A subsequent appeal from the director's decision was dismissed on April 30, 2007, after the Chief of the AAO also concluded that the applicant had failed to establish that he was eligible for late registration, and had failed to establish continuous residence and physical presence during the qualifying period.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence.

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.

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. The designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2009, 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 application with Citizenship and Immigration Services (CIS) on February 23, 2005.

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 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 at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The applicant's motion to reopen consists of documentation relating to his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. The motion does not address the applicant's eligibility for late registration. As such, the issue on which the underlying decisions were based has not been addressed or overcome on motion. Consequently, the decision of the AAO and the director that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding 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 support of his application and on appeal, the applicant submitted copies of various receipts, many of which did not show the applicant's name. Further, the receipts were all dated prior to the qualifying date.

On motion, the applicant submits the following documentation:

1. Copies of money order receipts dated in 2003, 2004, 2005 and 2006. The 2003 receipt does not show the applicant as the remitter.
2. A copy of an August 6, 2005, receipt issued to the applicant by Laitano Services in Miami.
3. A copy of a March 30, 2006, letter to the applicant from the Social Security Administration, indicating that the applicant applied for a Social Security card on that date.
4. A copy of a September 20, 2006, letter from Allstate Insurance Company addressed to the applicant in Miami.
5. A copy of his October 2006 monthly bank statement.
6. Copies of Forms W-2, Wage and Tax Statement, for the year 2006, and a copy of a year 2006 Form 8453, U.S. Individual Income Tax Declaration for an IRS e-file Return.
7. Copies of a schedule and fee receipt from the Miami-Dade County Public Schools, indicating that the applicant registered for a class on January 8 and April 25, 2007.
8. A copy of his Florida driver's license issued on February 27, 2007.

9. Copies of various retail receipts that do not include the applicant's name, and therefore are not probative evidence of the applicant's presence and continuous residence in the United States during the qualifying period.

The applicant submitted insufficient evidence to establish that he continuously resided in the United States since December 30, 1998, and was continuously physically present 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 decision of the AAO and the director 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. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is dismissed.