

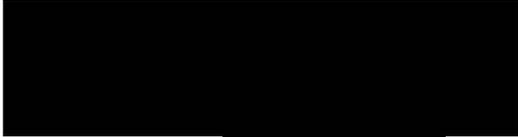


U.S. Citizenship
and Immigration
Services

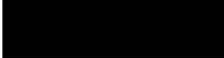
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FILE:



OFFICE: Vermont Service Center DATE:

JUN 30 2008

[EAC 07 058 70240]

[EAC 08 083 52566, *motion*]

INRE:

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:

SELF-REPRESENTED

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The previous decision of the AAO will be affirmed and the motion to reopen will be dismissed.

The applicant is a native and 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 a TPS application on November 24, 2006, under Citizenship and Immigration Services (CIS) receipt number EAC 07 058 70240. The Director, Vermont Service Center, denied that application on March 5, 2007, after he determined that the applicant failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods. A subsequent appeal was dismissed by the Chief of the AAO on January 3, 2008, after he concurred with the director's finding. The applicant has now submitted a motion to reopen.

On motion to reopen, the applicant asks CIS to reopen and reconsider his TPS application and grant him the opportunity to work legally in the United States. He further states that he has been in the United States since 1997 and that he has provided all of the requested evidence.

Section 244(c) of the Act, and the related regulations in 8 CF.R. § 244.2, provide that an applicant who is a national of a foreign state 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 CFR § 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.

The phrase continuously physically present, as defined in 8 C.P.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.P.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 continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States 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 CIS on November 24, 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.P.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.P.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.P.R. § 244.2(t)(2) above.

On motion, the applicant failed to provide any new and compelling evidence to establish his eligibility for late registration, consequently, the director's conclusion 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.

On motion, the applicant reasserts his eligibility for TPS and submits the following additional evidence:

1. Copies of money transfer receipts from MoneyGram for the period from 1998 to 2002; and copies of money transfer receipt from Giros Latino for the period from 2005 to 2007;
2. Copies of rent receipts for the period from 2001 to 2007;
3. Copies of sales receipts from grocery stores and retail establishments such as Macy's, Ross, Wal-Mart, a shoe store, etc., for the period from 2003 to 2007;
4. Copies of automobile insurance policies and receipts from the Good Rate Insurance Agency for the period from 2005 to 2006;
5. A copy of a letter from the Florida Department of Highway Safety & Motor Vehicle, Division of Driver License, issuing a Temporary Driving Permit on December 19, 2007;
6. A copy of a receipt from the Trail Auto Tag Agency dated June 3, 2005; and,
7. Copies of payment receipts from the United Premium Finance Company.

The evidence does not establish that the applicant has continuously resided in the United States from December 30, 1998 and been continuously physically present since January 5, 1999. It is determined that the applicant has not provided convincing evidence to establish his continuous residence and continuous physical presence during the required time period. 8 C.F.R. § 244.2 (b) and (c). The applicant claims to have resided residing in the United States since December 1997; however, he provides no evidence such as lease agreements, utility bills, earnings statements and affidavits from friends, relatives, or employers attesting to his residence during the period in question to support his claim. To meet his burden of proof, the applicant must provide supporting documentary evidence to eligibility apart from his own statement. 8 C.F.R. § 244.9(b). The sales receipts are generic and cannot be tied to the applicant; however, it is noted that the June 23, 2007 receipt from Nordstrom Fashion Valley is in another person's name. Furthermore, the credibility of the rent receipts is suspect since most of the receipts do not show an address for the rental property, and on other receipts, an apartment number has been inserted in the margin of the photocopy. Therefore, these receipts carry little evidentiary weight and will not serve to establish the applicant's eligibility.

In addition, it is also noted the record indicates the applicant's passport was issued on January 28, 2005 in Honduras, therefore, the applicant could not have been continuously physically present in the United States during the requisite periods.

The applicant has not submitted sufficient evidence to establish his **qualifying** continuous residence or continuous physical presence in the United States during the requisite periods. He has, thereby, 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 TPS will be affirmed.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated January 3, 2008, is affirmed.