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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 04 2008

[EAC 07 263 71089]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

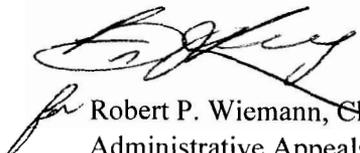
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.


for 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 on appeal. The appeal will be dismissed.

The applicant claims to be 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 director determined that the applicant failed to establish that he was eligible for filing his TPS application after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant is eligible for late initial registration for TPS because he is the spouse of a TPS-eligible alien. The applicant also submits evidence in support of this claim and 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.

The term *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 term *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 shows that the applicant filed this TPS application on June 7, 2007. CIS records indicate the applicant filed his initial TPS application (SRC 02 124 54049) on March 12, 2002. That application was denied on October 7, 2002 because the applicant failed to establish his eligibility for late initial registration for TPS. On June 5, 2006, the applicant filed a subsequent TPS application (EAC 06 192 51757). That application was denied on June 14, 2007 because the director determined that the applicant failed to establish his eligibility for late initial registration for TPS. The director found that the applicant did not establish that he is the spouse of a TPS-eligible alien.

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 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 June 14, 2007, the applicant was informed of the reasons his application had been denied. The director determined that the applicant has failed to establish prima facie eligibility for TPS. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the director erred in denying the application. According to counsel, the applicant qualifies for late initial registration as the spouse of an alien currently eligible for TPS. The applicant states that he indicated that he was single on his TPS applications and taxes because he did not think his marriage would be considered valid because he had been married in Honduras. However, in a May 24, 2005 letter, the applicant states "I have a daughter, [REDACTED] who is four years old and her mother [REDACTED] has TPS since 1999. We have been living together since 1998." (Emphasis added). It is noted that the applicant emphasizes that he and [REDACTED] have lived together since 1998, but does not mention marriage. Even if the applicant's claim regarding this marriage were accepted, CIS regulations may allow spouses of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. The spouse is still required to meet the continuous residence and continuous physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). To establish qualifying continuous residence and continuous physical presence, the applicant submitted the following:

1. Copies of State of New Jersey Certificate of Birth Records for the applicant's children showing birth dates of September 5, 2001 and August 21, 2006
2. Copies of statements from [REDACTED], and [REDACTED]
3. Copies of the applicant and [REDACTED]'s Honduran passports and birth certificates with English translations, and his Social Security Card.
4. Copies of two Marriage Certificates, with English translations.
5. A Copy of a Bank of America statement for the statement period from March 30, 2006 through April 26, 2006.
6. A copy of a Personal Auto Policy dated October 26, 2005.
7. Copies of pay stubs dated July 29, 2004, July 29, 2004, August 12, 2004, November 14, 2004, November 21, 2004, and December 5, 2004, October 16, 2005, October 23, 2005, October 30, 2005, November 6, 2005, and November 13, 2005.
8. Copies of 2002 and 2004 tax documentation.

The applicant submitted three different copies of passports, black and white and color copies of [REDACTED] issued in New York on March 12, 2001 and a copy of [REDACTED] issued in Honduras on June 30, 2006. The black and white copy of the passport issued in New York appears to have had the expiration date altered to 2007, but the color copy of the passport indicates an expiration date of 2006. 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). It is also noted that the Honduran-issued passport was

signed by the applicant and issued in Honduras on June 30, 2006. Consequently, the applicant may not be able to establish his continuous residence and physical presence in the United States during the qualifying period.

stated that the applicant has been her tenant at [REDACTED], Jersey City, New Jersey since February 1999. Ms. [REDACTED] stated that she rented the applicant a room at [REDACTED], Salisbury, North Carolina from August 2001 until February 2002 and at [REDACTED], Salisbury, North Carolina from February 2002 until August 2002. Ms. [REDACTED] stated that the applicant was her tenant at [REDACTED]

Spencer, North Carolina, from September 2002 until November 2005. These affiants also offer conflicting information and the discrepancies have not been satisfactorily explained. As discussed above, 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.

[REDACTED] stated that he has known the applicant since he arrived in the United States in October 1998. Mr. [REDACTED] stated that he has known the applicant since 1994 and knows that the applicant's daughter was born in 1994. However, these statements have little evidentiary weight or probative value. These statements are not supported by any corroborative evidence. Moreover, the applicant has not claimed that he has a daughter who was born in 1994. 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.

The applicant also submitted two different marriage certificates with English translations. One marriage certificate states that the applicant was married on December 18, 1994 in Chulutecu San Antonio de Flores. The other marriage certificate states that the applicant was married on December 22, 1994 in San Lorenzo, Valle Honduras, C.A. Again, these discrepancies have not been satisfactorily explained.

One of the birth certificates indicates a date of September 5, 2001, and is the earliest date presented as evidence of the applicant's presence in the United States during the requisite period. However, this document does not establish that the applicant was present in the United States at the birth of his daughter. In addition, as stated, at most, it can only establish the applicant's presence in the United States subsequent to the qualifying dates to establish continuous residence and continuous physical presence. As a result, the remaining evidence submitted is of little or no probative evidence.

The applicant has not submitted sufficient 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 decision to deny the application for temporary protected status will 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 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.