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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE:

[EAC 08 236 50566]

Office: VERMONT SERVICE CENTER

Date: **AUG 26 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 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 denied the application because 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.

On appeal, counsel for the applicant asserts that the applicant is eligible for late initial filing and that he also has met the continuous residence and continuous physical presence criteria for TPS. Counsel submits additional evidence.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2010, 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 a TPS application with the Immigration and Naturalization Service, now U.S. Citizenship and Immigration Services (USCIS), on September 30, 2007 under receipt number EAC 08 026 75780, and a second TPS application on September 3, 2008 under receipt number EAC 08 236 50566.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by USCIS. 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his 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 was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On January 29, 2008, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying residence and physical presence in the United States and the final court disposition relating to a September 23, 2006 arrest by the Prince William County Police Department for Driving Under the Influence of Alcohol. The applicant, in response, provided some documentation relating to his residence and physical presence in the United States and a copy of a September 19, 2007 form indicating the applicant had successfully completed the education requirement of the Alcohol Safety Action Program and his file was being placed in case review until the end of his probation on November 6, 2007. The applicant did not provide any additional documentation pertaining to the arrest.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application filed under receipt number EAC 08 026 75780 on March 25, 2008. The record does not reflect that the applicant appealed the director's decision.

The applicant filed a second Form I-821 after the initial registration period on September 3, 2008 under receipt number EAC 08 236 50566. The director denied this application on March 20, 2009 because the applicant had not established eligibility for late initial registration and had not demonstrated that he had met the continuous residence and continuous physical presence requirements for TPS. The director pointed out in the decision that a previously-filed application for TPS does not meet the definition for a qualifying condition for late registration.

On appeal, counsel for the applicant states that the applicant is eligible for late registration because he filed a second TPS application within 60 days of the denial of his first TPS application. Counsel states the previous TPS application was a form of "relief from removal" and asserts the applicant is eligible for late TPS initial registration based on his previously denied TPS application "submitted within the initial late registration period."

Contrary to counsel's assertion, the record does not reflect that the applicant filed either of the TPS applications within the initial registration period. There is no indication in the record that the applicant filed any TPS application prior to the Form I-821 filed on September 30, 2007. Counsel equates a pending TPS application as a form of "relief from removal" and asserts the applicant is eligible for late TPS initial registration based on his previously denied TPS application. However, pending or previously filed TPS applications do not fall under any of the categories listed in 8 C.F.R. § 244.2(f)(2) and having an application for TPS pending during the initial registration period does not render an alien eligible for subsequent late registration. While Temporary Protected Status may confer benefits that temporarily delay the alien's removal, the temporary benefits of TPS do not equate to "relief from removal" obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation. 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 had 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.

As stated above, the applicant was requested on January 29, 2008, to submit evidence establishing his qualifying residence and physical presence in the United States. In response, the applicant submitted the following documentation:

1. Two Internal Revenue Service Form 1099-Misc Miscellaneous Income, statements for the years 2002 and 2006;
2. A Cingular bill for the period from June 13, 2006 to December 7, 2006;
3. A County of Prince William (Virginia) 2005 Personal Property Verification Form for a Toyota vehicle;
4. Automobile insurance statements and premium notices for the periods from May 5, 2003 to November 5, 2003, from November 15, 2003 to May 5, 2004, and January 16, 2005 to July 16, 2005;
5. An earnings statement issued by Lisbon Concrete Enterprises for the period October 15, 2001 to October 20, 2001;
6. An affidavit from [REDACTED] JSC Concrete Construction Inc.;
7. An affidavit from [REDACTED];
8. A September 24, 2007 Sworn Statement from [REDACTED] and,
9. Copies of the biographic pages from the applicant's Honduran passport.

The director concluded that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, counsel for the applicant asserts that the applicant has demonstrated that he has met the residence requirements for TPS. Counsel submits copies of documents that had previously been furnished as well as the following additional evidence:

10. Statements from National Grange Mutual Insurance Company for the years 2005 and 2006;
11. A Cingular statement in the Spanish language;
12. A statement from Brown's Insurance Agency for the period from March 15, 2006 to March 1, 2007;
13. A Certificate of Liability Insurance for the period March 1, 2006 to March 1, 2007;
14. An April 9, 2008 application for a Virginia driver's license and identification card;
15. Automobile insurance bills dated March 5, 2004 and March 16, 2005;
16. A certification of Recognition of Course Completion – the AAA Driver Improvement Program, issued on May 22, 2004;
17. An undated Virginia DMV Vehicle Registration Renewal Notice for renewal of tags expiring on June 30, 2004, for a Toyota pickup purchased on May 19, 2001;
18. Handwritten receipts in the Spanish language which appear to be for payment of a Toyota vehicle and bearing dates of June 2, 2001, June 30, 2001, August 4, 2001, August 17, 2001, October 13, 2001, February 11, 2002 and February 12, 2002; and,
19. An earnings statement issued by Lisbon Concrete Enterprises for the period beginning October 22, 2001.

The affidavit from [REDACTED] states that he has known the applicant since 1998 and that while the applicant was "never directly employed" with JSC Concrete Construction Inc., he had worked for various subcontractors of the company. [REDACTED] did not state the names of the subcontractors nor

indicate that he had any knowledge of the dates the applicant worked for them. Other than the two pay statements from Lisbon Concrete Enterprises issued in October 2001, the applicant has not furnished evidence that he was employed by any of JSC Concrete Construction Inc. subcontractors during the requisite period. Therefore, the affidavit from [REDACTED] is of little or no probative value.

The affidavit from [REDACTED] stated the applicant worked for his company from 1997 to 1999. The employment affidavit from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. The Sworn Statement from [REDACTED] indicates the applicant lived at her home at [REDACTED] during the years 1997, 1998 and 1999. This conflicts with information provided by [REDACTED] who states the applicant was employed in Fresno, Texas from 1997 to 1999. The applicant has not explained how he could have worked in Fresno, Texas while residing in Manassas, Virginia during those years.

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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is sufficient to establish the applicant's continuous residence or continuous physical presence in the United States during the requisite period. The copies of the handwritten receipts provided by the applicant appear to be for payments for a Toyota vehicle, however, the receipts do not clearly show the name of the person who issued the receipts, and his or her address has not been provided. In addition, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). As the applicant failed to comply with the aforementioned, the receipts cannot be considered in the rendering of this decision.

The applicant has not submitted any credible evidence for 1998, 1999, 2000 or for the period prior to May 19, 2001, the date shown as the date of purchase of a Toyota pickup, on the Virginia DMS Vehicle Registration Renewal Notice in the applicant's name. In addition, the applicant's passport indicates that it was issued to him in Honduras on May 16, 2005, which further precludes a favorable finding as to the applicant's continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant has not submitted sufficient evidence to establish that he has continuously resided in the United States from December 30, 1998 and has been 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 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.

ORDER: The appeal is dismissed.