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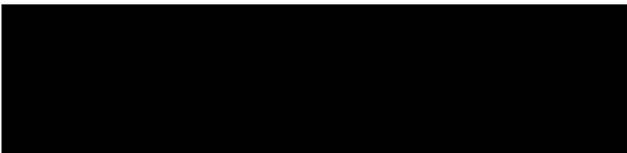


FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER Date: **FEB 24 2010**  
[EAC 08 270 70036]

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:



**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 or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

Perry Rhew  
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 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 that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999.

On appeal, counsel asserts that the applicant's asylum application should be afforded more weight when assessing his evidence of continuous residence and physical presence in the United States. Counsel asserts the applicant's asylum application and the affidavits submitted are sufficient to establish TPS eligibility. Counsel submits copies of documents that were previously provided.

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 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. The designation of TPS for Hondurans has been extended several times, 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 this application with U.S. Citizenship and Immigration Services (USCIS) on June 25, 2008.

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. 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).

The applicant has met the criteria under 8 C.F.R. § 244.2(f)(2)(ii) as he had a Form I-589, Application for Asylum and Withholding of Removal, pending during the initial registration period.

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 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 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).

At the time the applicant filed his TPS application, he presented the following documents in an attempt to establish his continuous residence and physical presence in the United States during the requisite periods.

- Affidavits from [REDACTED] and [REDACTED], who indicated that they have known the applicant since 1995 in El Monte, California. [REDACTED] indicated that the affiant was the uncle of her daughter and he would visit his niece often while living in California until 2005. [REDACTED] indicated that the applicant was “my friend’s relative” and the applicant would visit “her” until he moved to Minnesota in 2005. Several receipts, moneygram orders and affidavits attesting the applicant’s residence in the United State since 2000.
- A copy of a California identification (ID) card issued on June 14, 1993 and valid until May 11, 1999.
- Copies of Employment Authorization Cards issued on February 23, 1994, November 28, 1994, November 14, 1995, and December 9, 1996.  
Copies of two Employment Authorization Cards valid from August 28, 2006 and August 27, 2007.

On August 11, 2008 the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. Counsel, in response, provided copies of documents that were initially submitted along with:

- An affidavit from [REDACTED] who indicated that he has known the applicant since 1997 during the period the applicant resided in Los Angeles. The affiant indicated that he and the applicant used to be coworkers.
- A letter dated August 21, 2008, and an affidavit from [REDACTED] who indicated that he has known the applicant since 1996 and that the applicant was in his employ as a manager’s assistant from June 1998 to 2002. The affiant indicated that the applicant received his wages in cash.
- An affidavit from [REDACTED], who indicated that the applicant resided in her home from 1990 through 2005.

- Earnings statements, wage and tax statements, Income Tax Returns and documents for the years 2006 to 2008.

The director determined that the California ID card only establishes that the applicant was present in the United States in 1993; it did not establish the applicant's continuous residence in the United States. The director also determined that the affidavits submitted did not contain sufficient information and corroborative documents and, therefore, lacked probative value. The director concluded that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 20, 2009.

The employment letters from [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 244.9(a)(2)(1).

[REDACTED] in her affidavit, indicated that the applicant resided in her home, but failed to state the address where the applicant resided during the requisite period. The remaining affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite periods.

The applicant was present in the United States at the time he filed his Form I-589 in 1994, and each time he was issued his employment authorization cards from 1994 to 1996. However, the remaining evidence submitted does not establish with reasonable probability that the applicant continuously resided and was physically present in the United States during the requisite periods.

As the applicant had filed an asylum application, he was authorized to be employed in the United States under 8 C.F.R. § 274a.12(c)(8). The fact that: 1) the applicant did not obtain employment authorization after his card had expired on December 5, 1997; 2) the applicant did not appear for his asylum interview on January 10, 1997;<sup>1</sup> and 3) Service records do not reflect the applicant had filed for or received employment authorization until 2006 raises serious doubts to his claim of continuous residence in the United State during the requisite period.

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. The applicant has,

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<sup>1</sup> An interview notice dated December 20, 1996, was sent to the applicant's address of record, which informed the applicant of the scheduled interview.

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 AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Beyond the director's decision, although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by a passport or any national identity document from the alien's country of origin bearing photo and/or fingerprint to establish his nationality and identity. 8 C.F.R. § 244.9(a)(1). Therefore, the application must be denied on this basis as well.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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.