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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

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[REDACTED]

FILE: [REDACTED]
[EAC 08 292 70143]

Office: VERMONT SERVICE CENTER

Date:
JAN 14 2010

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 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).

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 is 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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant entered the United States in 1997 and that his father applied for and was granted TPS. According to counsel, the applicant was a minor child of a TPS-eligible alien during the initial registration period and is therefore eligible for TPS.

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.

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.

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 July 5, 2010, 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 applicant filed his initial TPS application on February 10, 2003. The Director, Texas Service Center, denied this application because the applicant failed to establish his eligibility for late initial registration.

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 United States Citizenship and Immigration Services (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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed this application on July 17, 2008, 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 May 7, 2003, the applicant was informed of the reasons for denial of the initial TPS application. The director determined that the applicant failed to provide any new and compelling evidence that overcomes the reasons for denying the initial registration. In regards to the current TPS application, the Director, Vermont Service Center, stated that the applicant had also failed to establish continuous residence in the United States since December 30, 1998 and his continuous physical presence in the United States from January 5, 1999 to the date of filing the application. Therefore, the director denied the application.

On appeal, counsel states that he was the minor child of a TPS-eligible alien during the initial registration period and is therefore eligible for TPS. The applicant also submits evidence in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application within the initial registration period. While regulations may allow children 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 child is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). As will be discussed below, the applicant has not met the continuous residence and continuous physical presence requirements. Consequently, 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 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 from January 5, 1999.

In support of his TPS applications, the applicant submitted a copy of his Honduran passport and a State of Florida Driver License issued on July 1, 2001; a Regional Explorer Award issued on May 27, 1998; a Certificate of Achievement for the 1998-1999 school years; an Attendance Award for 1998-1999; and a Citizenship Award issued in June 1999.

As stated above, the applicant was informed on March 7, 2003 and again on March 12, 2009 of the reasons for the denial of his TPS applications, including a failure to establish continuous residence and continuous physical presence in the United States.

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

applicant submits: copies of a birth certificate; copies of his father's employment authorization cards; a letter from the applicant's father; a money transfer receipt dated April 5, 2001; a bill from Progressive Insurance for the policy period from July 27, 2002 to January 27, 2003; a Florida identification card and a driver's license, both issued on July 31, 2001, a State of Florida Application to Marry issued on September 8, 2005; and birth certificates for the applicant's children filed on July 28, 2005 and January 22, 2009.

The passport and birth certificate establish the applicant's nationality and identity. The attendance awards are dated prior to the requisite dates to establish continuous residence and continuous physical presence in the United States during the qualifying period. The remaining evidence, other than one of the employment authorization cards issued to the applicant's father, is dated subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States during the qualifying period. Consequently this evidence is of little or no probative value.

While the applicant's father may have been granted TPS, USCIS records indicate that the applicant's father stated on his TPS applications that the applicant was residing in Honduras during and after the initial registration period. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c). In addition, the record of proceedings contains a Form I-862, Notice to Appear, which reflects that the applicant entered the United States on May 1, 1999, at or near San Ysidro, California, thereby precluding a finding that the applicant was in the United States during the required timeframe.

The applicant has not submitted sufficient evidence to establish his qualifying residence since December 30, 1998 and his continuous physical presence in the United States from 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 temporary protected status 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 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.