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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

M1

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date **JUN 25 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Texas Service Center (TSC). A subsequent application for re-registration was denied by the Director, California Service Center (CSC). The applicant appealed the director's decision. The initial application was reopened and the case remanded by the Administrative Appeals Office (AAO). The Director, Vermont Service Center (VSC), subsequently denied the application again, and it is now before the 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 applicant's initial application was denied as abandoned by the TSC Director on November 20, 2002. The Director, CSC, denied a subsequent re-registration application because the applicant's initial application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant appealed the decision which was remanded by the AAO.

The Director, VSC, then determined that the applicant failed to establish he had: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999. The director, therefore, denied the application.

On appeal, counsel for the applicant contends that the applicant entered the United States in 1991 and left the country from January 1999 until February 8, 1999. According to counsel, the applicant failed to maintain continuous physical presence and residence in the United States by reason of a brief, casual and innocent absence and, therefore, the appeal should be granted.

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 Secretary, Department of Homeland Security (Secretary), is eligible for TPS 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 Secretary 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.

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.

The term *brief, casual and innocent absence*, as defined in 8 C.F.R. §244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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, 2011, upon the applicant's re-registration during the requisite 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 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 record shows that the applicant filed his initial TPS application on March 8, 1999. On appeal from the denial issued by the Director, CSC, on July 23, 2005, the applicant stated that he had established prima facie eligibility. The applicant submitted additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. Specifically, the applicant submitted copies of 1999 and 2000 Forms W-2, Wage and Tax Statement; 1999 and 2000 Forms 1040A, U.S. Individual Income Tax Return; a Honduran birth certificate with English translation, and a personal statement from the applicant.

On November 28, 2008, the initial TPS application was reopened by the AAO and the case was remanded for further consideration and action.

On August 19, 2009, the applicant was requested to appear for fingerprints and was also requested to submit evidence establishing continuous residence in the United States since December 30, 1998. The applicant, in response, provided:

1. Copies of an Immunization Record date-stamped September 11, 1992; award certificates dated June 16, 1993, February 15, 1995, May 30, 1995, and for 1994-1995.
2. Copies of his high school record dated November 16, 1997, and college transcripts from San Jose City College dated December 23, 2005, and San Diego State University dated August 11, 2006.
3. Copies of WaMu monthly bank statements for the periods from June 19, 2007 through July 18, 2007, November 20, 2007 through December 18, 2007, March 26, 2008 through April 23, 2008, June 18, 2008 through July 17, 2008, November 27, 2008 through December 23, 2008, and April 24, 2009 through May 26, 2009.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. The director also determined that USCIS records indicate that the applicant last entered the United States on February 8, 1999, subsequent to the dates to establish continuous residence

and continuous physical presence in the United States. Therefore, the director denied the application.

On the current appeal, counsel contends that the applicant entered the United States in 1991 and left the country from January 1999 until February 8, 1999. According to counsel, the applicant failed to maintain continuous physical presence and residence in the United States by reason of a brief, casual and innocent absence and therefore the appeal should be granted. The applicant also submitted another personal statement.

In his initial personal statement, the applicant states that he wants to finish his studies and become a United States citizen. In his second statement, the applicant states that he entered the United States in 1991. According to the applicant, he returned to Honduras with his parents in January 1999 and returned alone and re-entered the United States on February 8, 1999 and has not left the United States since then. Counsel is correct in his contention that a brief, casual and innocent absence does not disqualify an applicant for lack of continuous residence and continuous physical presence in the United States. The applicant submitted copies of 1999 Form W-2 and Form 1040A; however, these documents only indicate the applicant was employed at some period during 1999. The documents do not establish *continuous* residence and *continuous* physical presence throughout the year. Therefore, the applicant has not provided sufficient evidence to establish his continuous physical presence and continuous residence in the United States during the qualifying periods.

The applicant 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 will be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by a photo identification, 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 as required under 8 C.F.R. § 244.9(a)(1). Therefore, the application must be denied on this basis as well.

Beyond the director's decision, it is also noted that the record of proceeding reflects that on June 7, 1999, under alien registration number [REDACTED] an immigration judge ordered the applicant removed *in absentia* from the United States to Honduras. A Warrant of Removal/Deportation, Form I-205, was issued on July 13, 1999. It does not appear that the warrant was executed. However, it presents the possibility that the applicant was deported and returned to the United States, without permission contrary to section 212(a)(9) of the Act. This further undermines the

credibility of the applicant's claim to have maintained continuous residence and continuous physical presence in the United States during the qualifying periods pursuant to 8 C.F.R. § 244.2(b) and (c).

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.