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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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U.S. Citizenship
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Services

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MAR 03 2010

FILE:

[EAC 09 119 76552]

Office: VERMONT SERVICE CENTER

Date:

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:

SELF-REPRESENTED

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 been continuously physically present in the United States since January 5, 1999; and 2) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that he disagrees with the director's decision. The applicant also 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.

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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On July 10, 2005, the applicant was arrested by the Greenville [South Carolina] Highway Patrol for "Driving Under the Influence 1st Offense," and "Driving Without a License."
- (2) On July 10, 2005, the applicant was arrested by the Greenville [South Carolina] Sheriff's Office for "Failure to Appear."

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 record shows that the applicant filed his initial TPS application on January 4, 2009.

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 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).

In support of his TPS application, the applicant submitted:

1. Copies of a Honduran Identification Card, a birth certificate with English translation, and Passport issued in Honduras on March 8, 2001.

2. Copies of a W-7, Application for IRS Individual Taxpayer Identification Number dated March 18, 2002; 1998 W-2 Wage and Tax Statements; payment statements dated March 6, 1998 and March 12, 1998; money transfer receipts dated December 20, 1999, April 4, 2000, April 15, 2001, May 16, 2002, December 27, 2003, July 4, 2004, September 24, 2007, January 25, 2008, March 28, 2009; receipts dated December 11, 2005 and December 29, 2006.

On March 25, 2009, the applicant was provided the opportunity 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 continuous physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant was also requested to submit certified judgment and conviction documents for all of his arrests. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. He also submitted documents related to his arrests but no certified judgment and conviction documents. Furthermore, the applicant did not present evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that he disagrees with the decision. The applicant also submits evidence in an attempt to establish his continuous 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. 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 issue in this proceeding is whether the applicant has established his continuous physical presence in the United States from January 5, 1999.

As stated above, the applicant was requested on January 4, 2009 to submit evidence establishing his qualifying continuous physical presence in the United States. In response, the applicant submitted copies of documents related to his arrests and resubmitted evidence previously provided.

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

3. Copies of a letter from [REDACTED] a Third Party Request for Information from Bank of America dated May 20, 2009; a Bank of America Monthly Statement for the period from June 7, 2002 through July 9, 2002.
4. Copies of pay stubs from dated March 20, 1998, May 15, 1998, May 29, 2008, December 31, 1998; 2000 – 2003 W-2 Wage and Tax Statements; a Residential Lease Agreement dated May 31, 1998; a Sprint Bill History dated May 20, 2009; Georgia Power Bills with due dates of May 4, 2009 and

August 28, 2009; a Savannah Electric receipt dated June 13, 2006; and a Dish Network bill with a due date of December 25, 1999.

The applicant also resubmits evidence previously provided.

The passport, birth certificate and Honduran Identification Card establish the applicant's nationality and identity. The payment statements dated March 6, 1998 and March 12, 1998, the pay stubs and the Lease Agreement indicate the applicant was present in the United States prior to the requisite dates to establish continuous physical presence. The 1998 W-2 Wage and Tax Statements indicates the applicant worked in the United States during 1998 but cannot establish continuous physical presence from January 5, 1999 to the filing date of the TPS application. The remaining evidence is of little probative value.

The applicant has not submitted sufficient evidence to establish his qualifying continuous physical presence in the United States from January 5, 1999. In addition, the applicant provided a photocopy of the first page of his passport in an attempt to establish his nationality and his identification. However, the passport was signed by the applicant and issued in Honduras on March 8, 2001. This is further evidence that the applicant has not met the continuous physical presence criteria described in 8 C.F.R. § 244.2(b), thereby precluding a finding that the applicant was continuously present in the United States during the operable timeframe.

He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

Beyond the director's decision it is noted that the applicant has failed to provide evidence revealing the certified final court disposition of his arrests detailed above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the application must be denied on this basis as well.

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.