

Identity Theft Prevention Act of 2008
prevent clearly unwarranted
invasion of personal privacy

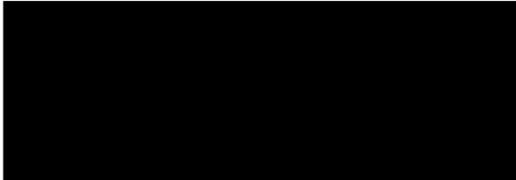
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M₁



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAR 24 2010**
[EAC 07 363 89315]

IN RE: Applicant: [REDACTED]

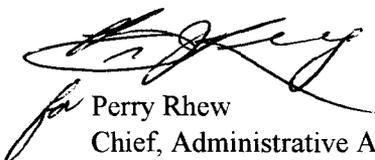
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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; 2) was eligible for late registration. The applicant also determined that the applicant failed to establish that he is a national of Honduras. The director, therefore, denied the application.

On appeal, the applicant states that he is a national of Honduras and that he entered the United States on August 27, 1994.

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 record shows that the applicant filed this TPS application on September 3, 2007. The applicant filed his initial TPS application on June 12, 2003. The Director, Vermont Service Center, denied this application because the applicant failed to establish his eligibility for late initial registration and because the applicant failed to establish continuous physical presence and that he is a national of Honduras.

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).

On January 7, 2004, the applicant was informed of the reasons for denial of his initial application. The director determined that the applicant failed to provide any new and compelling evidence to overcome the basis for denying the initial TPS application. Therefore, the director denied the application.

On appeal, the applicant states that he is a national of Honduras and that he entered the United States on August 27, 1994. According to the applicant he had an asylum case pending during the initial registration period. While the applicant's pending asylum application technically rendered him eligible for late registration, regulations at 8 C.F.R. § 244(g) also require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2). The applicant's asylum application was denied on September 23, 2003. In order to be eligible for late initial TPS registration, the applicant had to submit a TPS application on or by November 24, 2003. The applicant did not submit this TPS application until September 3, 2007. 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 physical presence in the United States from January 5, 1999, and if he is a national of Honduras.

As stated above, the applicant was informed on January 7, 2004 of the reasons the initial TPS application was denied. In support of this TPS application, the applicant submitted: copies of his passport; his Honduran Identification Card; a State of Tennessee Certificate for Driving; a Maryland Department of Transportation Driver License Correction Attachment; a birth certificate with English translation; State of Tennessee Department of Safety Official Driver Records issued on March 18, 2004 and October 26, 2002; and, a Request for Motor Vehicle Administration Records

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 Social Security Administration Request for Employment Information dated December 15, 1998. The applicant also submits evidence previously provided. The passport, birth certificate, and Identification Card establish the applicant's nationality and identity. The Tennessee Certificate for Driving has an expiration date of September 7, 2009. The remaining evidence is dated subsequent to the requisite dates to establish continuous physical presence. Therefore, the evidence is of little or no probative value.

The applicant has not submitted sufficient evidence to establish his qualifying 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). Furthermore, it is noted that 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 August 7, 2004. 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), thereby precluding a finding that the applicant was in the United States during the operable timeframe. Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

The record of proceeding reflects that on October 29, 1997, an immigration judge ordered the applicant removed from the United States to Honduras. The applicant failed to appear at the Baltimore, Maryland District Office on December 16, 1997, for his enforced departure.

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.