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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

M1

[REDACTED]

DATE: **MAR 06 2012** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

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 Vermont Service Center. 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 Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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 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 was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts that the applicant is eligible for late registration as he was granted voluntary departure on July 29, 1999. Counsel states that the applicant was residing in the United States for ten years prior to his apprehension on February 17, 1999.

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 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 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 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, 2013, upon the applicant's re-registration during the requisite time 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 U.S. 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. 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. The record reveals that the applicant filed his initial TPS application on May 28, 2010.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on December 1, 2010. On appeal, counsel asserts that the applicant meets the late registration eligibility. Counsel states, in pertinent part:

**In addition the petitioner was granted Voluntary Departure at Dallas, TX on July 29, 1999** (we do not have a copy of the order but if you call the immigration court case status system at [REDACTED] and look up the petitioner's A number the Voluntary Departure information will be provided).

Counsel's assertions, however, are not supported by the record. Specifically, the alien registration number listed by counsel in his brief does not belong to the applicant.<sup>1</sup>

USCIS records reflect that the applicant entered the United States on February 5, 1990, and he filed a Form I-589, Application for Asylum and Withholding of Removal, on or about April 4, 1995. The applicant was assigned alien registration number [REDACTED]. On June 20, 1995, a deportation hearing was held and the Form I-589 was denied and the applicant was ordered deported from the United States. The applicant departed the United States on April 2, 1998. On February 17, 1999, the applicant was apprehended by the U.S. Border Patrol at/near Laredo, Texas. On February 19, 1999, a Notice to Appear, Form I-862, was issued and served on the applicant. The Form I-862 does not establish that the applicant is eligible for late registration, because the applicant did not apply for relief from removal or meet any of the other criteria listed in 8 C.F.R. § 244.2(f)(2). On October 7, 1999, a removal hearing was held and the applicant was removed *in absentia*. Consequently, the director's conclusion that the applicant had 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 since January 5, 1999.

At the time the application was filed, the applicant submitted:

- A copy of page seven of his old passport, which contained an admission stamp indicating the applicant was admitted into Honduras on January 16, 1997.
- An affidavit from a sister, [REDACTED], who indicated that she shared an apartment with the applicant in 1998 at [REDACTED] York.

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<sup>1</sup> USCIS records do indicate that the alien whose alien registration number is listed in the brief was in fact granted voluntary departure on July 29, 1999

The director determined that based on his entry into the United States on February 17, 1999, the applicant could not demonstrate credible evidence of continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, and denied the application.

Counsel, on appeal, asserts that the applicant was residing in the United States for ten years (1990) prior to his apprehension on February 17, 1999. As evidence, counsel submits:

- A document informing the applicant to appear on April 8, 1991, at 8:30 a.m. at Division 63 of the Metropolitan Courthouse in Los Angeles County for a traffic ticket [REDACTED] for three offenses.
- A Form W-2, Wage and Tax Statement, for 1994 from [REDACTED] Corp.
- Several payment stubs dated from 1991 to 1993 and a document dated May 13, 1992, from [REDACTED] regarding a delinquent account.
- A document dated May 5, 1997, from the Internal Revenue Service for the 1996 tax period.

The above documents only establish that the applicant was residing in the United States prior to his departure on April 2, 1998. USCIS-based evidence indicates the applicant departed the United States prior to December 30, 1998, and did not return until February 17, 1999.

The record contains a Form I-213, Record of Deportable Alien/Inadmissible Alien, which indicates that at the time of the applicant's apprehension, the applicant stated that he departed Honduras on January 24, 1999, and illegally entered Guatemala and Mexico. He then traveled by bus to [REDACTED] on February 5, 1999, and subsequently entered without inspection into the United States. The applicant indicated that he was traveling to Brooklyn, New York to reside with his sister. The applicant was in possession of his Honduran passport that was issued in Tegucigalpa, Honduras on January 4, 1998.

The applicant's last arrival in the United States was subsequent to the eligibility period. Therefore, he cannot meet the criteria for continuous residence and continuous physical presence in the United States during the requisite periods described in 8 C.F.R. § 244.2(b) and(c). Consequently, the director's decision to deny the application for TPS 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 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.