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U.S. Citizenship  
and Immigration  
Services

DATE: **APR 18 2013**

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

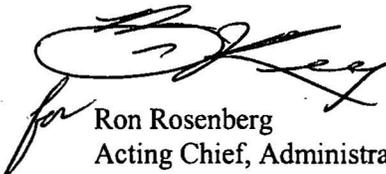
ON BEHALF OF APPLICANT:  
[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. A motion to reopen and reconsider, filed by the applicant, was granted by the director and he again denied the application. The applicant appealed the director's decision on the motion, and it 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 denied the application because 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 she is submitting evidence in support of the applicant's physical presence and continuous residence. Counsel states that these documents should be reviewed in concert and in the totality of the evidence, including the applicant's own credible testimony.

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;

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- (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 and second issues to be addressed 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.

The applicant indicated that he worked under the alias [REDACTED] during the 1990s.

On October 27, 2011, the director denied, in part, the application because the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On motion, from the director's decision, the applicant submitted affidavits from acquaintances and former co-workers in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite periods.

The director, in his decision of June 27, 2012, determined that other than the statements from co-workers, the applicant had failed to submit evidence establishing that he and [REDACTED] were one and the same. The director also determined that the remaining affidavits submitted were not, in themselves, persuasive evidence to support the applicant's assertion of continuous residence and continuous physical presence during the requisite periods and that the affidavits were not supported by any other corroborative evidence.

On appeal from the decision of June 27, 2012, counsel, in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite periods, submits a photocopied letter dated October 24, 1999 from the applicant's criminal attorney, [REDACTED] regarding a criminal case to be heard on November 5, 1999 in juvenile court in Galax City, Virginia. The letter indicated that the attorney had instructed the applicant to appear in court at that time.

The AAO, however, does not view the evidence submitted throughout this and prior TPS application proceedings as substantive to support a finding that the applicant has continuously resided and has been continuously physically present in the United States during the requisite periods as inconsistent and contradicting statements have been submitted.

1. [REDACTED] in her affidavit, indicated that she has known the applicant since 1995 and that the applicant "lived in the apartment where I manage until 1999." In their affidavits dated May 23, 2002, the applicant's parents attested to his arrival into the United States in July 1995.

These affidavits, however, lack probative value as the affiants failed to state the applicant's place of residence during the periods in question.

2. [REDACTED] in his affidavit, indicated that he has known the applicant through various employments since January 1996, and that he had known the applicant as [REDACTED] and [REDACTED]. The affiant indicated that

the applicant has worked at [REDACTED] and is currently a supervisor at [REDACTED]. In his affidavit, [REDACTED] of Marin, Virginia, indicated that he met [REDACTED] in 1995 in Galax, Virginia; that three years later, the applicant worked with him at [REDACTED] (now a division of [REDACTED]); that the applicant informed him of his true name, [REDACTED]; that in 2001, he and the applicant worked in Elkin, North Carolina for five years, and that he and the applicant have remained in contact since that time.

While it is common knowledge that some aliens have used aliases to gain employment, the burden of proof is on the individual to establish the use of the alias identity. Affidavits alone from co-workers are not sufficient evidence to establish one's true identity. As [REDACTED] and [REDACTED] are still in business, it is unclear why the applicant has not submitted evidence from his employer(s) to establish that he and [REDACTED] are one and the same.

3. The letter dated January 20, 2005 from [REDACTED] indicated that she has known the applicant for eight years and she provided the applicant's addresses where she claimed he resided.

The addresses of these claimed residences, however, contradict the addresses for [REDACTED] listed on the Form W-2, wage and tax statement, issued by the employers.

When inconsistent and contradicting information has been found, the submission of affidavits alone will not be sufficient to support the applicant's claim of an alias used during the periods in question. Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has submitted questionable evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite periods. 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 TPS on these grounds will be affirmed.

The third 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 application [REDACTED] on March 23, 1999. A notice dated June 29, 2000, was issued which denied the application due to the applicant's failure to establish continuous residence in the United States since December 30, 1998. The applicant filed a motion which was received on October 19, 2002. On April 2, 2003 the director denied the motion as it was untimely filed.

The applicant filed a TPS application [REDACTED] on January 24, 2005. On February 14, 2005 the application was rejected as the incorrect/no fee was submitted. The applicant filed TPS applications on April 29, 2005 [REDACTED] and May 26, 2006 [REDACTED]. On April 6, 2006, and December 14, 2006, the applications were denied or administratively closed because the applicant's initial TPS application had been denied.

The applicant filed the current application on May 21, 2010.

On appeal, the applicant neither addresses the finding of his ineligibility as a late registrant nor provides any evidence to establish his eligibility as a late registrant. To qualify for late registration, the applicant must provide evidence that at the time of *the initial registration period* (January 5, 1999, through August 20, 1999) he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). The applicant does not meet the provision under 8 C.F.R. § 244.2(f)(2)(iv) as he was 22 years old in 1999.

Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration. The provisions for late registration were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

The applicant has not submitted evidence that he has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration 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.