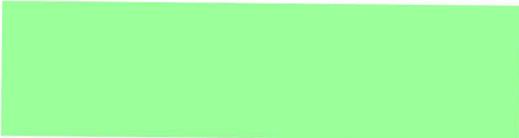


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U.S. Citizenship
and Immigration
Services



DATE: **APR 23 2014**

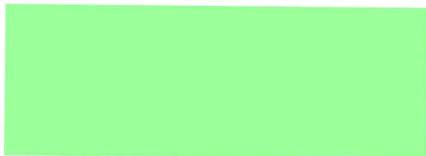
Office: VERMONT SERVICE CENTER

FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you.

Ron Rosenberg
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 applying for 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 had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999.

On appeal, counsel submits additional evidence in an attempt to support the applicant's claim of continuous residence and continuous physical presence in the United States during the requisite periods.

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 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.

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 in the United States since January 5, 1999. The designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2015, 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 *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects that the applicant filed an initial TPS application [REDACTED] on July 16, 2002, which was accepted under the late initial filing registration provisions. On December 7, 2011, the director denied that application because the applicant failed to establish continuous residence since December 30, 1998 and continuous physical presence since January 15, 1999 in the United States. The AAO, in dismissing the appeal on May 28, 2013, concluded that the applicant had presented sufficient credible evidence to establish residence and physical presence in the United States since July 2002; however, the remaining documents were inconsistent and contradictory and, therefore, raised questions to their credibility and authenticity. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The applicant filed the current TPS application on May 23, 2010 under the late initial filing provisions. On November 6, 2013, the director denied the application because the applicant had not provided any new and compelling evidence that overcame the reasons for denying the initial TPS application. On appeal, counsel rebuts the adverse findings that were addressed in the AAO's decision of May 28, 2013.

Regarding the handwritten notation, "9/24/98 entered from Honduras," on the photocopied school transcript from [REDACTED] High School, counsel asserts that the applicant acknowledges this contradiction, but contends that the entry date of November 1998 was based only on his best recollection. Counsel states that evidence does exist and is included to indicate an entry and residence in the United States prior to November 1998. The applicant, in his affidavit, states that he specifically remembers being in the United States in 1998 based on the friends and acquaintances he met that year. The applicant asserts, in pertinent part:

From information provided to me and discussions that I recall, I had always been under the impression that I had entered the United States in November of 1998. However, given the fact that I was very young in age, it is certainly possible that I entered the United States earlier in that year.

The applicant asserts that due to fear and concern as to their immigration status and the ability to financially sustain themselves, "I believe that it was for these reasons that my parents did not immediately enroll me into school when I first entered the country."

Counsel submits a letter from [REDACTED] whom the applicant, in his affidavit, recalls meeting in 1998. Mr. [REDACTED] indicates that he met the applicant around the holiday season of 1998; that he worked as a supervisor for [REDACTED] and that he supervised the applicant who worked on a part-time basis at the construction company for approximately 4 years. The affiant indicates that the construction company is no longer in business. The letter from Mr. [REDACTED] however, lacks probative value as no evidence has been submitted to support the statement. Although the affidavit from the applicant's father has been deemed suspect, it nevertheless contradicts Mr. [REDACTED] letter. In the affidavit, the applicant's father indicated in pertinent part, "I supported him [the applicant] economically during the year of 1998 because he could not work because he was a minor." *

Counsel submits a residential lease agreement, which raises questions to its authenticity as it indicates that the agreement "is made on the 8th day of July 01, 1999." Further, the premises [REDACTED] (Massachusetts) listed on the agreement does not correspond with the place of residence indicated on the TPS applications of the applicant's father filed on August 16, 1999 and June 2, 2000, and no contemporaneous evidence was submitted to support the agreement.

Regarding, the TPS applications filed on August 16, 1999 and June 2, 2000 by the applicant's father which indicated that the applicant was residing in Honduras during these timeframes, counsel requested that the AAO considers the possibility of clerical error in those assertions and to give evidentiary value to the father's affidavit at that time.

Regarding the document from [REDACTED] counsel asserts that it unfairly prejudices the applicant to fault him by discrediting the evidentiary value of the submission “due to clerical markings of the health center.” Counsel’s assertion has no merit as no credible evidence has been presented from the health center to dispute our finding that its letter appeared to have been altered.

The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The statements provided by counsel and the applicant are insufficient to meet his burden of proof. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant submitted no competent objective evidence resolving the inconsistencies in the record.

In view of the inconsistencies in the foregoing documents, the AAO determines that the applicant has failed to establish that he was continuously residing in the United States from December 30, 1998 and has been physically present in the United States since January 5, 1999, as required for TPS applicants from Honduras under 8 C.F.R. § 244.2(b) and (c). Accordingly, the director’s denial of the application on these grounds will be affirmed.

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.