



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JAN 28 2014**

Office: VERMONT SERVICE CENTER

[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 (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 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, in part:

[t]he applicant filed timely before the end of the first designation period and within the initial registration period. It is true that the required period of registration is included within the designation period but in no way it means that registration during the first designation outside of the registration period is not initial registration.

Counsel states that the applicant was filing for “late re-registration” since he had failed to continue filing for TPS. Counsel states that as an alternative the applicant could request late initial registration “since he had a pending application for a change of status (EWI to TPS which is a nonimmigrant status for adjustment of status purposes, which was also pending).” Counsel asserts that the applicant has submitted sufficient evidence to establish continuous residence and continuous physical presence from 1998 to the present. Counsel submits a copy of the brief that was previously submitted in response to the notice of intent to deny along with a copy of the applicant’s driver history record from the Virginia Department of Motor Vehicles.

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 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 *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The first issue to be addressed is whether the current application is to be considered a re-registration or a late initial filing.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The extension of the TPS designation for Honduras was effective July 6, 2000, and the re-registration period began May 11, 2000 and ended July 5, 2000.

According to counsel the applicant filed a Form I-821, Application for Temporary Protected Status, on June 3, 2000. As evidence, counsel submitted a copy of a Form I-765, Application for Employment Authorization, with a received date-stamp by the Vermont Service Center. Counsel also submitted a copy of a Form I-821 date-stamped as received by the Vermont Service Center on June 13, 2000.

Filing an application for TPS during a designated re-registration period does not render all individuals eligible for the benefit sought. The re-registration period is limited to individuals: 1) whose applications have been granted; 2) whose applications remain pending; or 3) who did not file during the initial registration period and meet any of the criteria under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2).

Contrary to counsel's assertion, the current application cannot be considered a re-registration application as the applicant was never granted TPS and he did not have a TPS application that remained pending.

Because the applicant was not eligible to file a re-registration application, the director treated the application as a late registration.

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. 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).

The applicant's first attempt to file a TPS application was in June 2000; however, it was rejected and returned to the applicant. The applicant's second attempt occurred on June 21, 2001 during the 90-day re-registration period of the extension of the TPS designation for Honduras which began May 8, 2001 and ended August 6, 2001. On June 26, 2001, the TPS application was returned to the applicant as he failed to submit the required fee and evidence establishing eligibility for late registration. The applicant was given the opportunity to submit evidence of his initial filing or evidence establishing his eligibility for late registration, but he failed to do so.

The applicant filed the current Form I-821 on January 17, 2012, and indicated that it was his first application for TPS.

On June 19, 2012, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, counsel submitted a brief and citing to section 244(a)(4)(A) of the Act indicated, in pertinent part:

The law allows those who failed to register timely at the first designation's registration period to do so outside of the first registration period and within the period of the designation; as long as they prove *prima facie* eligibility and register on the next registration within the first 30 days.

The director, in considering counsel's brief, concluded that the applicant had not submitted sufficient evidence to establish late registration eligibility and denied the application on April 11, 2013.

The re-registration period is limited to individuals who registered during the initial registration period or who registered after that date under the late initial provisions. The extension of the TPS designation for Honduras in 2000 was not a new designation, but rather, it was an extension of the designation. The record contains no evidence that the applicant had establish *prima facie* eligibility¹ at the time the Form I-821 was submitted in June 2000.

Simply filing a TPS application during a re-registration period does not render an individual eligible for late initial registration. The provisions for late registration were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period (January 5, 1999 through August 20, 1999) for the various circumstances specifically identified in the regulations. The applicant, on appeal, 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 be affirmed.

¹ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.

The second and third issues in this proceeding are whether the applicant has established continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

The applicant submitted photocopies of:

- An identification card issued by the Texas Department of Public Safety which expired on October 17, 2004.
- An identification card and a driver's license issued on November 3, 1999, and May 6, 2011, respectively by the Commonwealth of Virginia.
- His children's birth certificates born on July 27, 2000 and January 27, 2004 in Virginia along with an Order Determining Parentage dated March 4, 2011 for each child.
- A marriage certificate for his marriage on February 12, 2001 in [REDACTED] Virginia.
- A Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, dated March 29, 2001.
- Form W-2, Wage and Tax Statement, for 2001 and 2002 and page one of Form 1040EZ, Income Tax Return for 2002.
- An affidavit of witness from his spouse, [REDACTED] who indicated that to the best of her knowledge the applicant has been residing in the United States since October 20, 1998.

The director determined that the documents submitted were not sufficient to establish the applicant's continuous residence and continuous physical presence in the United States as no evidence was submitted from 2005 through 2010. Accordingly, the director denied the application.

The AAO does not view the documents discussed above as substantive to support a finding that the applicant continuously resided in the United States since December 30, 1998 and has been continuously physically present in the United States since January 5, 1999 to the date of filing.

Counsel states that in order for the applicant to request a learner's permit in Virginia he had to establish his residence with utility bills or other bills in his name. The AAO does not disagree with counsel's statement; however, it is unclear why "utility bills or other bills" were not submitted to USCIS in order to establish the applicant's residence and presence in the United States from 2005 through 2010.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence and continuous physical presence during the period in question seriously detracts from the credibility of his claim. 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 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.