



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 3 1 2015**

FILE: [REDACTED]
APPLICATION RECEIPT #: [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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and 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. § 1254a. On April 22, 2014, the director denied the application because the applicant failed to establish eligibility for late registration, continuous residence since December 30, 1998 and continuous physical presence since January 5, 1999 in the United States. The director also denied the application because the applicant failed to submit requested court documentation relating to his criminal record. The director further found the applicant to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of possession of drug paraphernalia.

On appeal, the applicant submits additional evidence in support of his appeal. The applicant indicated on the appeal form that he would file a brief and/or additional evidence with the AAO within 30 days. Pursuant to 8 C.F.R. § 103.3(a)(2)(vii) and (viii), an affected party may request additional time to file a brief, which is to be submitted directly to the AAO. To date, we have not received any additional documents, nor were any statements made on the Form I-290B regarding the denial of the applicant's TPS application. Therefore, the record must be considered complete.

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, 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 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. *Id.*

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. *Id.*

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and 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, 2016, 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. 8 C.F.R. § 244.9(b). To meet this burden of proof the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. *Id.*

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

To meet the initial registration requirements in 8 C.F.R. § 244.2(f)(1), Honduran applicants must have filed TPS applications during the initial registration period, January 5, 1999 through August 20, 1999. If applicants did not file their initial TPS applications during this time period, to qualify for TPS they must meet the late registration requirements as stated above in 8 C.F.R. § 244.2(f)(2) or (g). Specifically, to qualify for late registration, the applicant must provide evidence that during the initial registration period (January 5, 1999 through August 20, 1999) the applicant 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 record reflects that after the initial registration period had expired, the applicant filed an initial Form I-821, Application for Temporary Protected Status on August 6, 2001. On December 14, 2002, that application was denied due to abandonment. No motion was filed from the denial of that application.¹

The applicant filed the current TPS application on May 2, 2013. Any Form I-821 subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for re-registration or as a new filing for TPS benefits. The director treated the application as a late registration application, as the applicant was not previously granted TPS benefits.

In a request for evidence dated February 10, 2014, the applicant was asked to submit evidence establishing eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant failed to submit evidence establishing late registration eligibility.

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 for the various circumstances specifically identified in the regulations. On appeal, the applicant does not address his ineligibility as a late registrant or provide any relevant evidence. Therefore, we affirm the director's decision that the applicant has not submitted evidence to show that he has met any of the provisions outlined in 8 C.F.R. § 244.2(f)(2).

¹ A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

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

In the request for evidence dated February 10, 2014, the applicant was asked to submit evidence establishing qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted school documentation from Board of Education and [REDACTED] in [REDACTED] New Jersey, which indicated that the applicant enrolled at his high school on September 8, 1999 and entered the United States in March 1999. The document also indicated that, prior to attending [REDACTED] the applicant was enrolled in school in Honduras. The applicant submitted a copy of an immunization record and a wage and tax statement, Form W-2, for 2013.

On appeal, the applicant resubmits the immunization record and the school documentation from the Board of Education and [REDACTED] in [REDACTED] New Jersey. The applicant also submits:

- A property assessment notice for 2012 from [REDACTED] New Jersey.
- Pay stubs for the periods ending December 9, 2012 and May 9, 2014.
- A 2014 tax bill for the first and second quarters from the City of [REDACTED]
- An affidavit from [REDACTED] of [REDACTED] New Jersey, who indicates that she has known the applicant since his entry into the United States in December 1998.
- An agreement entered into between the applicant and Retro Fitness on April 21, 2012.

The affidavit from [REDACTED] does not provide sufficient detail to establish that she has an ongoing relationship with the applicant that would permit her to know of the applicant's whereabouts and activities throughout the requisite periods. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period.

The immunization record has no probative value or evidentiary weight, as no vaccinations dates were listed.

While the school documents establish that the applicant enrolled on September 8, 1999 and completed the ninth grade, it also establishes that the applicant entered the United States in March 1999. The applicant, on appeal, has not provided probative evidence to dispute this documented entry date. Further, the evidence of record reflects a significant gap in submitted residence and physical presence documentation between the year the applicant completed the ninth grade and the beginning of April 2012.

Accordingly, we find that the evidence submitted throughout the application process is insufficient to establish continuous residence and continuous physical presence in the United States during the requisite periods. The applicant 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 fourth and fifth issues in this proceeding are the applicant's criminal history and his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act.

An alien shall not be eligible for TPS under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. 8 C.F.R. § 244.1. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. *Id.*

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

In the request for evidence dated February 10, 2014, the applicant was asked to provide certified judgment and conviction documents from the courts for all his arrests, including an arrest on January 6, 2002, under the name [REDACTED] for burglary and theft; on April 22, 2003, under the name [REDACTED] for possession of marijuana/hash; and on April 23, 2002, under the name [REDACTED] for improper behavior. The applicant was also advised to provide a police report or court documentation that states, in grams, the amount of marijuana involved for any charges involving possession of marijuana.

In response, the applicant submitted a certified letter dated February 19, 2014, from the [REDACTED] New Jersey Record Division, Department of Public Safety, Bureau of Criminal Identification, which indicate the following criminal charges against the applicant and his aliases [REDACTED]

<u>Date</u>	<u>Charge</u>
January 31, 2008	Use or Possession w/intent to use
March 16, 2008	Simple Assault
August 13, 2001	Driving while suspended, Registrations, A.T.S. warrant,

	Maintenance/devices, Requirements/Markers, Uninsured vehicle
January 6, 2002	Burglary and theft by unlawful taking
August 2, 2002	Simple assault
April 22, 2003	Dist CDS Juv & Pregnant woman

The applicant asserts that he has only been charged with possession of marijuana cigarette and a pipe to smoke marijuana and that the remaining criminal records belonged to his brother, [REDACTED]

[REDACTED] The applicant submitted the following from the New Jersey Municipal Courts of [REDACTED] and [REDACTED]

- Certified court documentation indicating an arrest on April 22, 2003 for possession of marijuana/hashish, a violation of NJS 2C:35-10A(4). The applicant was placed on conditional discharge for a period of six months and ordered to pay a fine and court costs. On [REDACTED], 2003, the case was dismissed.

The Conditional Discharge is a form of pre-trial intervention, created specifically for simple marijuana offenses in the New Jersey. Entry into the program suspends the criminal proceeding and occurs without adjudication of guilt. *See* NJS 2C:36A-1. The court documentation indicates that the applicant successfully completed a conditional discharge program, there was no entry of a guilty/nolo contendere plea by the applicant, and the court did not enter a judgment of guilt. Therefore, we find the applicant has not been convicted of possession of marijuana/hashish for immigration purposes. Section 101(a)(48)(A) of the Act.

- Certified court documentation indicating an arrest on January 31, 2008 for possession of drug paraphernalia, a violation of NJS 2C:36-2. The applicant was found guilty of violating this offense and ordered to pay a fine and court costs.
- Certified court documentation indicating a violation under the name [REDACTED] on November 11, 2002 for improper behavior/disorderly conduct, a violation of NJS 2C:33-2A(1). On [REDACTED] 2002, the defendant was adjudged guilty of this petty disorderly person offense and was ordered to pay a fine and court costs.

On appeal, the applicant submits certified criminal court dispositions dated April 28, 2014, from the Municipal Court of Union City, which reflects the following:

- The charge of NJS 2C:12-1a (simple assault) committed under the name [REDACTED] on March 16, 2008 was dismissed for lack of prosecution on [REDACTED] 2008.
- The charge of NJS 2C:29-3a(7) (gave false information to a law enforcement officer) committed under the name [REDACTED] on October 27, 2005 was dismissed on motion of prosecutor on [REDACTED] 2008.

- The charge of NJS 2C:12-1a(1) (simple assault) committed under the name [REDACTED] on August 2, 2002 was dismissed on [REDACTED], 2002.
- The charges of NJS 2C:18-3a (criminal trespass) and 2C:20-3a (theft of movable property) committed under the name [REDACTED] on January 6, 2001 were dismissed on [REDACTED] 2002.

The complaint/summons number indicated on the Federal Bureau of Investigation report and the document from the Record Division, Department of Public Safety, Bureau of Criminal Identification is the same complaint number indicated on the court disposition for the criminal trespass and theft of movable property offenses. Therefore, we find that the applicant has provided the final disposition for his arrest on January 6, 2002, and that the listed arrest date of January 6, 2001 is a clerical error.

The applicant, on appeal, however, has not provided the final court dispositions relating to the offenses committed on August 13, 2001. The applicant is therefore ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application on this ground will be affirmed.

On appeal, the applicant resubmits the court disposition for the possession of drug paraphernalia conviction along with a complaint narrative indicting that the applicant "did possess drug paraphernalia to inhale into the human body a controlled substance. Specifically by, having in possession a small silver colored metal pipe containing residue of burnt matter with an odor a burnt marijuana."

A conviction of possession of drug paraphernalia may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. The applicant has demonstrated that the possession of paraphernalia charge related to marijuana and was 30 grams or less. The applicant, therefore, is eligible to file a waiver due to his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of possession of drug paraphernalia. *See Matter of Martinez Espinoza*, 25 I&N Dec. 118, 125 (BIA 2009).

However, as the appeal will be dismissed based on the applicant's ineligibility for TPS pursuant to 8 C.F.R. §§ 244.2(f)(2), 244.2(b) and (c), and 244.9(a), the matter will not be remanded for the director to grant the applicant the opportunity to file a Form I-601, Application for Waiver of Grounds of Inadmissibility.

The appeal is dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.