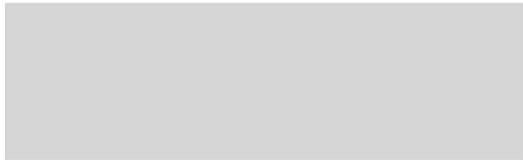


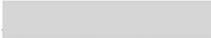
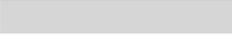


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 29 2015**

FILE   
APPLICATION RECEIPT #: 

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:



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](http://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 Center Director, Vermont Service Center, denied the application for Temporary Protected Status. 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 July 18, 2014, the director denied the application because the applicant failed to establish eligibility for late registration. The director also denied the application because the applicant had failed to establish continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant through counsel states that he has been continuously residing in the United States since his entry in June 1998. The applicant asserts that he had filed for TPS and was granted employment authorization in 2000. The applicant also asserts that the previously submitted affidavits are the only evidence he has to establish physical presence in the United States for 1998 and 1999. The applicant provides an explanation and documentation to address the discrepancy regarding his place of residence from 1999 to 2005.

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 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 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, 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.*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant filed an Application for Temporary Protected Status (Form I-821) on December 28, 2001. On September 13, 2002, the Director, Texas Service Center,

denied the application because the applicant failed to establish late registration eligibility, continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999 in the United States. No appeal or motion was filed from the denial of that application.

The applicant subsequently filed a Form I-821 application on May 28, 2013.

The first and second issues to be addressed 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.

In response to a Request for Evidence dated January 27, 2014, which requested that the applicant submit evidence establishing continuous residence since December 1998 and continuous physical presence since January 5, 1999, the applicant submitted a sworn affidavit and evidence.

The director determined that the evidence submitted by the applicant was only sufficient to establish residence and physical presence in the United States from 2001 to the date of filing. The director determined that the remaining documents were insufficient as they were not supported by corroborative evidence. The director also indicated that the affidavits from Mr. [REDACTED] and Mr. [REDACTED] appeared contradictory in nature as the affiants, in their affidavits, listed different addresses during the same time period for the applicant. The documents consisted of the following:

- Money transfer receipts for September 2000 and November 2000.
- Wage and tax statement (Form W-2) for 2000 from Shoney's, and an employment letter dated February 25, 2014, from a representative at The [REDACTED] – a [REDACTED] who attested to the applicant's employment in 2000.
- Affidavits notarized May 29, 2002 and May 14, 2013, from [REDACTED], owner of [REDACTED] at [REDACTED] Tennessee. In his first affidavit, the affiant attested to the applicant's residence at [REDACTED], Tennessee since January 1999. In his second affidavit, the affiant attested to the applicant's residence at his apartment complexes ([REDACTED] Tennessee from January 1999 through 2005.
- Affidavits dated March 12, 2013, and May 7, 2013 from by [REDACTED]. In his first affidavit, the affiant asserted that he shared an apartment with the applicant at [REDACTED] Tennessee since September 1998. In his second affidavit, the affiant attested to the applicant's residence at [REDACTED] Tennessee since January 1999.
- Affidavits from several other affiants attesting to the applicant's presence in the Gatlinburg, Tennessee in 1998, 1999 and 2000.

On appeal, the applicant asserts that from January 1999 to December 2005 he resided at ([REDACTED] Tennessee, which is a part of [REDACTED]

The applicant states that the complex main building is located at [REDACTED] Tennessee where the administration was located, rent was collected

and [REDACTED] resided. According to the applicant, residents living at [REDACTED] oftentimes used the name [REDACTED] when referring to their residence. The applicant submits a printout from the website, [www.peoplefinders.com](http://www.peoplefinders.com), which lists the property records for I [REDACTED] Drive and [REDACTED]

The applicant has presented a plausible explanation to address the discrepancy in the affiants' affidavit regarding his place of residence. A search of the 2015 white pages was conducted which lists [REDACTED]' address as [REDACTED]. Based on documents contained in the record, including documents furnished on appeal, it is concluded that the applicant has furnished sufficient evidence to establish that he has continuously resided in the United States since December 30, 1998, and has been continuously physically present since January 5, 1999. Therefore, the applicant has overcome this deficiency outlined in the director's decision.

The third issue to be addressed is whether the applicant is eligible for late registration.

The applicant indicated at Part 1 of his most recent Form I-821 that it was his first application to register for TPS. Accordingly, the director treated the application as a late registration, as any Form I-821 subsequently submitted by the same applicant after an initial application.

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).

In an affidavit notarized May 7, 2013, the applicant asserted that at the time TPS was authorized for citizens of Honduras in January 1999, "I applied and was approved." To support his assertion, the applicant submitted a copy of his employment authorization card<sup>2</sup> and a copy of a decision denying his Petition for a Nonimmigrant Worker (Form I-129), which indicated, in part, "[t]he records show that the beneficiary [the applicant] is currently in Temporary Protected Status."

USCIS records, however, do not indicate that a TPS application was filed by the applicant during the initial registration period for Hondurans. Rather, records indicate that the applicant's initial TPS application was filed on December 28, 2001. It is noted that the applicant incorrectly attributes the granting of employment authorization as approval of his TPS application. Based upon filing of the

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<sup>1</sup> See [http://www.whitepages.com/name/\[REDACTED\]](http://www.whitepages.com/name/[REDACTED]) July 16, 2015.

<sup>2</sup> Employment authorization was approved on January 14, 2002 with a validity period until July 5, 2002.

initial Form I-821, the applicant was afforded temporary treatment benefits and issued employment authorization upon establishing *prima facie* eligibility for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS. To date, no evidence has been submitted establishing that a Form I-821 had been filed during the initial registration period of January 5, 1999 through August 20, 1999.

In response to a Request for Evidence dated January 27, 2014, which also requested that the applicant submit evidence establishing late registration eligibility, the applicant resubmitted copies of his May 7, 2013 affidavit and his employment authorization card. Citing to 8 C.F.R. § 244.17, counsel asserted that USCIS may accept a late re-registration application for "good cause."

However, the "good cause exception" cannot be used to justify late initial filings as it is only implemented to justify registrants that had been previously *granted* TPS and failed to re-register during the extension period. Section 244(c)(3)(c) of the Act, 8 C.F.R. § 244.17(c). There is no evidence that the applicant's initial TPS application had been approved.

The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) 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, on appeal, has not established that he has met the provisions outlined in 8 C.F.R. § 244.2(f)(2) for late registration. Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

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.