

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



(b)(6)



Date:

JUN 18 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. § 1254

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) 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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Center Director, Vermont Service Center, and is now before the Administrative Appeals Office 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. On April 23, 2014, the director denied the application because the applicant failed to establish he was eligible for late registration. The director also denied the application because the applicant had failed to establish 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, the applicant asserts he qualifies for late registration because he was in immigration proceedings in 1999 and subsequently was granted voluntary departure. He also submits evidence to establish his qualifying continuous residence and continuous physical presence in the United States.

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 as designated by the Attorney General is eligible for temporary protected status 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 Attorney General 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 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 first 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's initial TPS application was received on December 10, 2004.

On November 13, 2013, 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). The applicant, in response, provided three affidavits that had accompanied his original application. The director determined that the applicant's evidence was insufficient to establish he was eligible for late registration.

The applicant, through counsel, submits a brief explaining his eligibility for late registration and a Notice to Appear, a Notice of Hearing and an Order of Release and Recognizance with reporting dates to demonstrate he was in removal proceedings.

The applicant, through counsel, asserts that he is eligible for late initial registration because he was in removal proceedings during the initial registration period from January 5, 1999 through August 20, 1999, and therefore had relief from removal. However, while the applicant was granted voluntary departure on May 17, 2001, the record does not contain any information to show that his relief of voluntary departure was pending prior to May 17, 2001. Moreover, even if the applicant's voluntary departure had rendered him eligible for late registration, 8 C.F.R. § 244(g) also requires late registration to be filed within the 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2). The applicant was required to depart the United States on or before July 31, 2001, and therefore he was required to submit his initial TPS application on or before September 31, 2001. The applicant did not submit his initial TPS application until December 10, 2004. The director's conclusion that the applicant did not establish his eligibility for late registration will be affirmed.

The second and third issues in this proceeding 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.

On November 13, 2013, the applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant, provided three affidavits that he had provided with his original application. The applicant, through counsel, on appeal asserts that he was residing and physically present in the United States since April 1999. To prove his assertion, the applicant submits:

- His statement concerning his efforts to obtain evidence to establish his residence and presence
- The Notice to Appear, dated April 2, 1999; a Notice of Hearing, dated December 7, 1999; and an Order of Release on Recognizance with a written log of reporting dates between April 6, 1999 through July 3, 2000
- Respondent's temporary Florida driver's license, issued November 27, 2013
- A letter from [REDACTED] indicating that the applicant opened an account on April 22, 2010.
- Tax documents for 2006, 2008, 2009, 2011, 2012, and 2013
- Florida vehicle registration issued in 2008
- USCIS correspondence from February 11, 2006
- Lien Satisfaction Notice dated February 6, 2006
- Personal correspondence dated March 6, 2000

The applicant, in his statement, explains his efforts to obtain evidence establishing his residency. He indicates that he has been physically present in the United States since December 1998. However, the applicant's evidence establishes that he traveled to Texas and took pictures of a residence, without proving that he resided there in December 1998. The record also contains a Notice to Appear, charging the applicant with entering without being admitted or paroled at or near [REDACTED]

Texas, on or about March 29, 1999. Evidence in the record, such as banking and tax documents, a driver's license and vehicle registration, illustrates that the applicant was physically and continuously present for 2006, 2008, 2009, 2011, 2012, 2013 and that he also may have been present in 2000, according to personal correspondence. However, none of this information establishes his presence in 1998 or his continual physical presence in 1999. Moreover, his arrival and apprehension on March 29, 1999, appears to contradict his assertions of continuous presence since December 1998. While the applicant provided three affidavits, one which indicates the applicant and the affiant have been friends in the United States since May 15, 1999, and the other two indicating that the applicant was in the United States in December 1998, none is accompanied by other supporting documentation. Moreover, even if the applicant arrived in the United States on December 16, 1998, as claimed by the applicant and one affiant, gaps in the evidence do not show his continuous physical presence for the years 2001 through 2006, 2007 and 2010. As the applicant's last arrival in the United States was subsequent to the eligibility period, he cannot meet the criteria for continuous residence and continuous physical presence in the United States during the requisite periods described in 8 C.F.R. § 244.2(b) and(c).

The applicant has not submitted sufficient evidence to establish continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The applicant has not, therefore, established 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 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 not met this burden.

ORDER: The appeal is dismissed.