

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)

[Redacted]

Date: **MAY 20 2015**

FILE: [Redacted]

APPLICATION RECEIPT: [Redacted]

IN RE: Applicant: [Redacted]

AKA [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

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 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 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. § 1254.

The Acting Center Director denied the application, determining that the applicant failed to establish he was: 1) qualified to register under one of the four late registration provisions; 2) had continuously resided in the United States since December 30, 1998; and 3) had been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant, through counsel, indicates that he submitted his initial TPS application in January 1999 but that he has no evidence of the filing and is attempting to obtain this information. The applicant also asserts that the evidence he submits on establishes his continuous residence in the United States since 1998.

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, 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. 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 first issue in this proceeding is whether the applicant timely filed a TPS application during the initial registration period, and if not, whether he 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, an 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 filed his initial TPS application on May 16, 2013, after the initial registration period.

On November 14, 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 his February 10, 2014 response, only provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration because he did not provide evidence that he qualified under one of the late-registration provisions.

On appeal, the applicant does not address the Acting Center Director's finding that he is ineligible for late initial filing or assert his eligibility for late registration. Instead he claims that he submitted his TPS application in January 1999, thereby filing timely. However, the applicant provides no evidence to corroborate his claim that he timely filed.

The record lacks evidence of the applicant's filing in January 1999. Two letters from the applicant in the record indicate previous attempted filings. In one he states that he initially filed on July 12, 1999, and attempted to renew in June 2000. In another letter, dated October 23, 2001, the applicant states that his application was rejected on August 20, 1999 and again on October 12, 1999 for procedural issues. The record confirms that the applicant's application was rejected on August 20, 1999 and October 12, 1999 for procedural defects.

The applicant has not demonstrated that he timely filed a TPS application during the initial registration period. The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. The applicant has likewise not submitted evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS 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.

With his TPS application, the applicant submitted one affidavit and several money wire receipts showing he sent money to individuals in Honduras between 1998 and 1999. On November 14, 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 a letter from his pastor, a photocopy of a birthday card from his pastor written in Spanish, copies of money transfers to Honduras from March 1998, April 1999, June 1999 and May 1998 and his untranslated birth certificate.

The Acting Center Director determined that the applicant did not establish that he had continuous residence since December 30, 1998, or that he had continuous physical presence since January 5, 1999, and denied the application.

The applicant, on appeal, indicates that he submitted proof of his continuous residence in the United States from 1998 through present. As evidence, the applicant submits:

- Three affidavits from friends and the applicant's pastor indicating that they met the applicant in the United States in 1998
- Photographs
- An affidavit from the applicant's U.S. citizen spouse indicating that she met the applicant in August 2002
- Birth certificates for the applicant's U.S. citizen wife and their children, who were born in 2003, 2008, 2012, and 2013
- A marriage certificate and registration for the applicant and his spouse, indicating their marriage in 2004
- U.S. tax documents for 2005, 2006, 2007, 2009 and 2010
- A 2006 property deed with related insurance documents
- An attendance report for one child for 2013 and 2014
- For [REDACTED] a name the applicant indicates he used as an alias, property tax information from between 1998 and 2002 and tax documents from 1998, 1999, 2002, 2003, 2004 and 2005.

The applicant also provides a baptismal certificate and graduation certificate for bible studies, both written in Spanish, without the required translations; therefore these were not considered. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

The affidavits from the applicant's friends have little evidentiary weight or probative value, as they are not supported by corroborative evidence. It is reasonable to expect that the applicant would have contemporaneous evidence to support the affiants' assertions; however, he provides no such evidence.

The affidavit from the applicant's pastor has little evidentiary weight or probative value, as it lacks basic information expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not include the seal of the organization on the affidavit and the affidavit is not on the letterhead of the organization.

The affidavit from the applicant's spouse is corroborated by their marriage certificate, showing that she and the applicant married in 2004. Moreover, their tax documents from 2005, 2006, 2007, 2009 and 2010, and their children's birth certificates from 2003, 2008, 2012 and 2013 demonstrate the applicant's presence and residence during those years. However, although the applicant's wife states that she met the applicant in 2002 and they lived together since December 2002, the applicant provides no evidence to show that they were together in 2002, 2011, or from 2014 to the present.

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[REDACTED]

NON-PRECEDENT DECISION

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The tax documents from 2005, 2006, 2007, 2009 and 2010, the applicant's marriage certificate from 2004, and their property deed from 2006 credibly establish that the applicant was in the United States between 2004 and 2007 and 2009 and 2010.

With respect to the evidence he submits reflecting the name [REDACTED], the applicant has not submitted sufficient evidence to establish that he and [REDACTED] are the same individual.

The applicant has not submitted sufficient credible 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, 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.

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.