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



U.S. Citizenship
and Immigration
Services



DATE: **MAY 27 2015**

FILE: [REDACTED]
[REDACTED] CONSOLIDATED
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

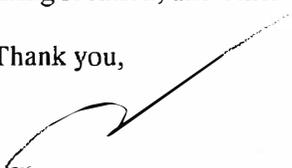
ON BEHALF OF APPLICANT:



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,


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 11, 2014, 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, the applicant through counsel submits a photocopy of his child's birth certificate. The applicant indicates at Part 3.1.b. on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days. To date, however, no additional correspondence has been received. 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 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 (and persons without nationality who last habitually resided in Honduras) 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 TPS designation 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.

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 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 his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. *Id.*

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

The record contains a copy of the applicant's Form I-589, Application for Asylum and Withholding of Removal, filed on February 25, 1997. On February 19, 1998, during deportation proceedings, the immigration judge denied the applications for asylum and withholding of deportation, denied voluntary departure and ordered the applicant deported to Honduras. On June 29, 1999, the Board of Immigration Appeals (BIA) administratively closed the applicant's case in order for him to apply for TPS.¹

The record reflects that the applicant filed his initial TPS application on August 15, 2000. On February 11, 2002, the director denied the application due to abandonment. On June 9, 2003, the applicant filed a motion to reopen, which was dismissed by the director on September 29, 2003. The applicant filed another TPS application on January 3, 2005. On June 28, 2005, the Director, California Service Center, denied that application. No appeal was filed from the denial of that application.

The applicant filed the current TPS application on June 13, 2013, and indicated at Part 1 that it was his first application to register for TPS. The director denied the application, in part, because the applicant failed to establish that he was eligible for late registration.

The applicant, however, is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) because his asylum application is pending before the BIA. Therefore, the director's finding that the applicant has failed to establish late registration eligibility is withdrawn.

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.

Based on the documents that were submitted with the filing of the applicant's previous TPS applications, the director determined that the applicant had submitted sufficient evidence to establish his residence and physical presence in the United States from December 30, 1998 through

¹ Administrative closing of a case does not result in termination of the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

December 31, 2003.² It is noted that the record also contains a letter dated November 23, 2004, from ██████████ Massachusetts, who indicated that the applicant had been in his employ since May 1996 through a temporary staffing agency. In response to the director's Request for Evidence dated February 18, 2014, the applicant submitted copies of Form 1040A, U.S. Individual Income Tax Return, and Form W-2, Wage and Tax Statement, for 2003 and 2004 along with a letter dated April 29, 2004 from the applicant addressed to "Immigration Authorities" authorizing the mother of his child to travel with the child outside of the United States

The director determined that the evidence submitted did not establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant submits a copy of his daughter's birth certificate stating that she was born on ██████████ 1998 in the Commonwealth of Massachusetts. The birth certificate was certified by the applicant (and his daughter's mother) on ██████████ 1998. Though the birth certificate may serve to establish the applicant's presence in the United States from ██████████ 1998, it cannot serve to establish continuous residence and continuous physical presence in the United States beyond that date. Therefore, the birth certificate has little probative value.

As such, the applicant has still not submitted sufficient evidence to establish his continuous residence or continuous physical presence in the United States during the time periods between his I-821 application filings in 2005 and 2013. He has, therefore, not met his burden of demonstrating 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 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.

² The applicant submitted copies of an affidavit of residence for 1999, billing statements for 2002, a Massachusetts Resident Income Tax Return for 1998 and 1999, and U.S. individual income tax returns and wage and tax statements for 1998, 1999, 2001, 2002, and 2003.