



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-A-A-S-

DATE: SEPT. 10, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of Nicaragua, seeks Temporary Protected Status (TPS). *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254a. The Director, Vermont Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed

On August 28, 2014, the Director denied the application because the Applicant did not 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 did not submit the requested information regarding his military, paramilitary, or weapon training.

On appeal, the Applicant asserts that he entered the United States in March 2002, and requests that his application be reconsidered as he has a family to support. The Applicant submits additional evidence to demonstrate continuous residence and continuous physical presence in the United States during the requisite periods.

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 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.*

We conduct appellate review on a *de novo* basis. See *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 to be addressed is whether the Applicant has established eligibility 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 Applicant filed his initial TPS application on October 22, 2013.

On April 10, 2014, a request for evidence (RFE) was issued, which requested that the Applicant submit evidence establishing his eligibility for late registration, as set forth in 8 C.F.R. § 244.2(f)(2). In response, the Applicant asserted that in 1998 through 1999, he was residing in Honduras and was in a common law marriage with the mother of his child. The Applicant contended that he is therefore eligible for late registration. Although the Applicant asserted that evidence of marriage documentation would be provided, no relevant supporting documentation has been submitted.

The provisions for late registration were created in order to ensure that TPS benefits were made available to applicants who did not register during the initial registration period for the various circumstances specifically identified in the regulations. On appeal, the Applicant asserts that he was not aware of the initial registration period for TPS and provides no further evidence pertaining to his ineligibility for late registration. 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).

The second and third issues to be addressed are whether the Applicant has established continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States.

The Applicant indicated on his TPS application that he entered the United States on March 16, 2002. The Applicant submitted evidence establishing his residence and physical presence in the United States in 2006, 2007, and from 2010 to 2013.

On April 10, 2014, in a request for evidence, the Applicant was asked to submit evidence establishing continuous residence since December 30, 1998 and continuous physical presence since January 5, 1999, in the United States. The Applicant, in response, provided medical documents relating to an on-the-job injury and several follow-up doctor visits from January 30, 2008 through October 28, 2009.

On appeal, the Applicant presents additional evidence to establish his residence and physical presence since his entry into the United States on March 16, 2002.

The Secretary designated the dates from which Honduran TPS applicants are required to establish continuous residence, as of December 30, 1998, and continuous physical presence, as of January 5, 1999. The record reflects that the Applicant did not enter the United States until March 16, 2002. Therefore, he was not present in the United States during the requisite periods required to establish continuous residence and continuous physical presence. Accordingly, the Applicant has not 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 on these grounds will be affirmed.

The fourth issue to be addressed is the applicant's military training.

At part 4, item 2t, of the application, the Applicant answered "yes" to the question, "[h]ave you ever received any type of military, paramilitary, or weapon training?" On April 14, 2014, the Applicant was asked to provide a statement that included information regarding his service within the military or non-governmental unit. The applicant did not submit a response.

On appeal, the Applicant provides answers to the questions regarding his military service. The Applicant asserts that he served in the Sandinista National Liberation Front from 1988 to 1990. As the Applicant is ineligible for TPS pursuant to 8 C.F.R. §§ 244.2(f)(2) and 244.2(b) and (c), this matter need not be remanded to the Director for consideration under section 208(b)(2)(A)(i) of the Act.

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.

Cite as *Matter of B-A-A-S-*, ID# 13879 (AAO Sept. 10, 2015)