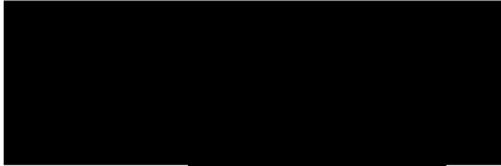




U.S. Citizenship
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Services

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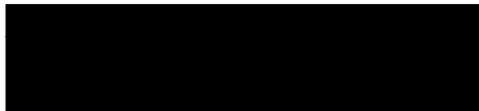
[SRC 02 202 56065]

OFFICE: TEXAS SERVICE CENTER

DATE: APR 09 2007

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:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Gomez

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 director denied the application because the applicant had failed to establish that he was eligible for late registration.

On appeal, the applicant resubmits evidence previously provided and states that he is sending a brief and/or evidence within 30 days. To date, however, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 § 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.
- (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 condition described in paragraph (f)(2) of 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.

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.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the latest extension valid until July 5, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed his initial TPS application on June 17, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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 Citizenship and Immigration Services (CIS). 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).

In a notice of intent to deny dated July 12, 2002, 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). On February 6, 2004, the director reissued a notice of intent to deny requesting that the applicant submit: (1) evidence establishing his eligibility for late registration; (2) evidence establishing his continuous residence in the United States since December 30, 1998; and (3) certified court dispositions of all of his arrests, including the September 29, 1995 arrest listed on the Federal Bureau of Investigation (FBI) fingerprint results report. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. He also provided court documents relating to his September 29, 1995, arrest. Because the applicant had failed to provide any evidence to establish that he was eligible for late registration, the director denied the application on March 12, 2004.

The applicant has submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant, on appeal, neither addressed nor submitted any 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 TPS application will be affirmed.

Based upon the circumstances of this particular case, additional analysis also is provided.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The FBI report, contained in the record of proceeding, reveals the following arrests relating to the applicant:

- (1) On September 29, 1995, in Tampa, Florida, the applicant was arrested for battery and burglary of a dwelling. The applicant subsequently furnished the court record from the Clerk of Circuit Court, Hillsborough County, Florida, under Case No. [REDACTED] indicating that the applicant was charged with Count 1, burglary of a dwelling, Florida Statute (FS) 810.02, a felony; and Count 2, battery, FS 784.03, a misdemeanor. On October 10, 1995, the applicant was released on "recognizance." On October 30, 1995, the disposition of the case shows: "LETTER OF RELEASE" as to both Counts 1 and 2.

It is not clear from the record whether the applicant was prosecuted for these offenses and/or the case was dismissed; nor did the applicant submit a copy of the "letter of release."

Subsequent to the director's denial decision dated March 12, 2004, and the filing of the applicant's appeal on April 2, 2004, the FBI report reveals that the applicant was arrested for the following offenses. However, the final court dispositions of these arrests are not included in the record of proceeding. CIS must address these arrests and/or convictions in any future decisions or proceedings:

- (2) On April 13, 2005, the applicant was arrested in Miami, Florida, for petit theft. The final court disposition of this arrest is not contained in the record of proceeding.
- (3) On March 27, 2006, the applicant was arrested in Miami, Florida, for Count 1, driving under the influence; and Count 2, DUI-damage to property or person. The final court disposition of this arrest is not contained in the record of proceeding.

The applicant has failed to provide the complete final disposition from the Court relating his arrest, detailed in No. 1 above. The applicant is also ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

The record of proceeding contains the Record of Deportable Alien, Form I-213, indicating that on July 13, 1993, the applicant was apprehended near Miami, Florida, subsequent to his entry into the United States on June 11, 1993, as an alien crewmember (D-1). Because the applicant remained longer than authorized, a Form I-259, Notice to Detain, Deport, Remove or Present Alien, was issued to the Shipping Agent/Master of the

vessel, and ordered that the applicant be removed to foreign on or before August 11, 1993. There is no evidence that the applicant departed from the United States as required.

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 temporary protected status 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 failed to meet this burden.

ORDER: The appeal is dismissed.