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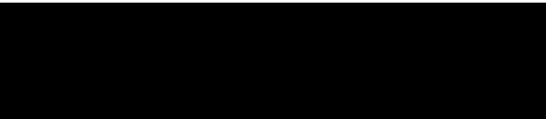
U.S. Department of Homeland Security  
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U.S. Citizenship  
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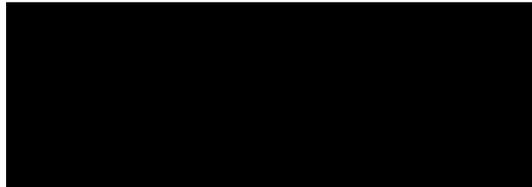


FILE: [REDACTED]  
[EAC 06 249 80349]

Office: VERMONT SERVICE CENTER

Date: AUG 24 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 M. Gomez for*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the 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 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 applicant appears to be represented; however, the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The director denied the TPS application because the applicant failed to respond to a request for evidence and because he failed to establish that he was eligible for late registration. The director further determined that the applicant had failed to submit national identity documents as requested. The director found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The director also denied the application because the applicant failed to provide final court dispositions stemming from his August 2001, July 2003, and October 2003 arrests.

On appeal, the applicant asserts his claim of eligibility for TPS, and submits evidence.

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 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 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 phrase 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 phrase 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. 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 January 5, 2009, upon the applicant's re-registration during the requisite 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 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).

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. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on May 26, 2006, when he was 27 years of age.

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.

On November 28, 2006, 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 was also requested to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on February 13, 2007.

On appeal, the applicant states that he is eligible for late registration in that he is listed as a dependent on his mother's asylum application that she filed in 1993.

Although the record of proceeding indicates that the applicant's mother did file an asylum application in 1993 when the applicant turned 21 years of age, his derivative status on his mother's TPS application ceased to exist. Further, a review of the record reveals that the applicant's own asylum application was administratively closed on March 2, 2005, and that he failed to file for TPS within the 60-day time frame after his 21<sup>st</sup> birthday, or within 60 days after the asylum application was terminated. The applicant cannot be considered a dependent of an asylum applicant for purposes of establishing eligibility for TPS late registration. The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the director's decision with respect to this issue will be confirmed.

A second issue is whether the applicant has submitted sufficient evidence to establish his identification or national identity.

A person applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity

documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; [REDACTED])

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

On November 28, 2006, the applicant was requested to submit evidence to show that he is a citizen or national of Honduras. The director requested that the applicant submit photo identification, or any national identity document from his country of origin bearing a photo and/or fingerprint such as a photocopy of his passport, national identification card, etc. The applicant failed to respond to the director's request.

The director determined that the applicant had failed to submit evidence of his identity and nationality and denied the TPS application on February 13, 2007.

On appeal, the applicant resubmits a copy of his birth certificate with English translations.

There has been insufficient evidence submitted to establish the applicant's eligibility for TPS. The applicant submitted a copy of his Honduran birth certificate with English translations. However, this evidence alone does not establish identity or nationality. There has been no national identity documentation submitted to establish the applicant's identity or nationality. 8 C.F.R. § 244.2(a)(1). Consequently, the director's conclusion that the applicant had failed to establish that he was a citizen or national of Honduras will be affirmed.

A third issue to be addressed is whether the applicant has submitted final court decisions stemming from his arrests in 2001 and 2003, sufficient to determine his eligibility for TPS.

The director denied the application on February 13, 2007, because the applicant failed to submit a final court disposition stemming from his arrests in 2001 and 2003.

On appeal, the applicant claims his eligibility for TPS.

As promulgated by statute, 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. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The record reveals the following offenses:

- The applicant was arrested on August 10, 2001, by the Hialeah Police Department, Florida, and charged with petit larceny, "theft municipal ordinance."
- The applicant was arrested on July 9, 2003 by the Metro-Dade Police Department, Florida, and charged with "BWpetit larceny, theft municipal ordinance," and a non-moving traffic violation, listed as a 2<sup>nd</sup> degree misdemeanor.
- The applicant was arrested on October 22, 2003 by the Metro-Dade Police Department, Florida, and charged with "nonmoving traffic violations-DWLS," also a 2<sup>nd</sup> degree misdemeanor.

The applicant is responsible for providing all evidence revealing the final court dispositions of his arrests detailed above. Although the applicant has provided some documentation from the "Traffic Law Firm" of Coral Gables, Florida, he has failed to provide the final court dispositions of his August 2001, July 2003, and October 2003 arrests. He is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application under 8 C.F.R. § 244.9(a). Therefore, the director's decision to deny the application with respect to this issue also will be affirmed.

A final issue in this proceeding is whether the applicant has submitted sufficient evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

The record of proceeding shows that the applicant failed to respond to the director's request for evidence dated November 28, 2006, pertaining to his continuous residence and continuous physical presence.

The director denied the TPS application on February 13, 2007, after determining that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

1. Copies of Notices of Action, Receipt Notices, Employment Authorization Replacement Cards, and appointment notices issued by the U.S. Department of Justice, Immigration and Naturalization Service [Citizenship and Immigration Services] to the applicant and dated November 13, 1998, 1999, 2000, 2002, 2004, 2005, and 2006;
2. Copies of The Traffic Law Firm retainer agreements listing the applicant as client and dated March and April of 1999;
3. A copy of the applicant's Florida driver's record dated May 13, 1999;
4. A copy of a letter from the Standard Premium Finance Company to the applicant and dated August 27, 1999;
5. Copies of the applicant's employee time card report and employer information dated November and December of 1999 and 2000; and,
6. Copies of the applicant's U.S. Individual Income Tax records dated 2000, 2003, 2004, and 2006.

The applicant has submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite time periods, as 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 withdrawn. However, the appeal will be dismissed for the reasons stated above.

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 failed to meet this burden.

**ORDER:** The appeal is dismissed.