

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

AUG 04 2003

FILE: [REDACTED]
WAC 02 244 53652

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

IN RE: Applicant: [REDACTED]

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

PUBLIC COPY

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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. § 1254a.

The director determined that the applicant failed to establish that he has continuously resided in the United States since December 30, 1998, and has been continuously physically present since January 5, 1999 to the date of filing the application. The director, therefore, denied the application.

On appeal, the applicant states he is seeking derivative temporary protected status through his mother. The applicant maintains that there is no requirement for a specific date of entry in such cases.

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 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.

(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.

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations and since January 5, 1999. 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.

Continuously resided means residing in the United States for the entire period specified in the regulations and since December 30, 1998. 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 record reflects that the applicant filed his TPS application on June 28, 2002. In a notice of intent to deny dated November 6, 2002, the applicant was requested to submit: (1) evidence to show that he has continuously resided in the United States since December 30, 1998; (2) evidence to show that he has been continuously physically present since January 5, 1999; (3) evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999; and (4) police clearances for every city in which he had lived since arriving in the United States, as well as certified court dispositions of each arrest. The director determined that the evidence the applicant furnished in response to the notice was insufficient to establish that he had continuously resided in the United States since December 30, 1998 and had been continuously physically present since January 5, 1999. The director noted that

the applicant indicated on the TPS application that he did not enter the United States until October 1999 and, therefore, denied the application.

The applicant, on appeal, states that he applied for temporary protected status as the child of a TPS applicant. He maintains that such applicants do not have to establish that they entered the United States by a specific date. The applicant has not submitted evidence that his mother had been granted temporary protected status. Nevertheless, all applicants for TPS must meet the physical residence and continuous residence requirements enumerated above and show that they are otherwise eligible under the provisions of section 244 of the Act.

The applicant stated on his TPS application that he did not enter the United States until October 1999. Therefore, he could not have met the requirements of continuous residence in the United States since December 30, 1998 and continuous physical presence since January 5, 1999. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The burden of proof is upon the applicant to establish that he 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.