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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street, N. W.

Washington, DC 20536



File:



Office: Vermont Service Center Date:

DEC 31 2003

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 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 Citizenship and Immigration Services (CIS) 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 N. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The case was subsequently reopened on motion at the Vermont Service Center, and the decision of the director was not reversed. The case 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 indicated on his application that he entered the United States without a lawful admission or parole on June 1, 1997. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he had continuously resided in the United States since December 30, 1998.

On appeal, the applicant reasserted his claim of eligibility.

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 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.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 in the United States since January 5, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On August 20, 2002, the applicant was requested to submit evidence establishing his residence in the United States since December 30, 1998. The applicant, in response, provided the following documentation:

1. A certificate announcing the applicant's completion of a work-related training course in June 1997;
2. Doctor's notes reflecting the results of medical tests on June 20, 1997;
3. A copy of a receipt from Rent-A-Center, Inc., dated May 20, 1999, reflecting a Virginia address for the applicant;
4. A copy of a "Lease Purchase Agreement" between the applicant and Rent-A-Center, Inc., dated May 20, 1999;
5. Copies of pay-stubs issued to the applicant by the Roof Center, Inc., on July 9, 1999, August 27, 1999, October 1, 1999, and October 15, 1999; and,
6. Original pay-stubs issued to the applicant by the Roof Center, Inc., on July 9, 1999, August 27, 1999, September 24, 1999, and October 15, 1999.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 29, 2002. On appeal, the applicant reasserted his claim and submitted the following documentation:

7. An affidavit from an acquaintance [REDACTED] who attested to the applicant's residence in the United States since February 1997;
8. Copies of [REDACTED] and [REDACTED] residential leases for 1997, 1999, 2000 and 2001;
9. A copy of a Transcript of Driver History Record from the Virginia Department of Motor Vehicles reflecting the December 18, 1999, issuance of a Virginia Drivers License as well as a January 11, 2000, citation for driving without a license;
10. A copy of a certificate of title for a vehicle issued to the applicant by the Commonwealth of Virginia on March 6, 2000;
11. A copy of a bill from Nationwide Assurance Company for vehicle coverage through April 4, 2000;
12. A copy of a receipt for personal property tax paid by the applicant to the City of Alexandria, Virginia, on October 2, 2000;
13. A report of a service call on March 21, 2001, by Comcast regarding the applicant's telephone service;
14. A copy of a receipt for personal property tax paid by the applicant to the City of Alexandria, Virginia, on

May 8, 2001; and,
15. A copy of his Sprint PCS bill dated July 23, 2002.

The applicant has not submitted any evidence to establish his residence in the United States during the period from December 30, 1998, to May 20, 1999. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.