

U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

PUBLIC COMMENT  
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*M*

[Redacted]

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: AUG 02 2004

IN RE: Applicant:

[Redacted]

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.

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 applying for 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 failed to establish that he had: 1) continuously resided in the United States since December 30, 1998; and, 2) been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant submits a statement and additional 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 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 parole; 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 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 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 May 29, 2003, the applicant was requested to submit evidence establishing his residence in the United States since December 30, 1998, and physical presence in the United States since January 15, 1999. The applicant was also requested to submit evidence of nationality. The applicant, in response, provided the following documentation:

1. his pay statement from Expert Building Maintenance, LLC for work performed during the pay period from July 16, 2001 through July 31, 2001;

- 2.. a photocopy of [REDACTED] Employment Authorization Card valid from July 6, 2002 to July 5, 2003 [REDACTED], and,
3. the applicant's Employment Authorization Card valid from July 6, 2002 to July 5, 2003.

The director noted that the applicant indicated on the Form I-821, Application for Temporary Protected Status, that he first entered the United States on February 12, 1999. The director, therefore, determined that the applicant had failed to submit sufficient evidence to establish continuous residence in the United States since December 30, 1998, or continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant states, "I am filing through my mother's TPS. . . this is a "follow to join case." However, there are no "follow to join" provisions for TPS applicants. While CIS regulations may allow the children of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS as detailed in 8 C.F.R. § 244.2(a) through (e).

The applicant has submitted only one pay statement in an attempt to establish continuous residence in the United States since December 30, 1998, and physical residence in the United States since January 5, 1999. This one document is not sufficient to establish his qualifying residence or physical presence in the United States during the requisite periods. Further, by his own admission, the applicant did not enter the United States until February 12, 1999. The applicant cannot satisfy the residence and presence criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the applicant has also failed to provide any evidence of his nationality. It is further noted that the applicant filed his Form I-821 on August 14, 2002. The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. On appeal, the applicant states that he is eligible for late registration as the child of an alien currently eligible for TPS, and submits a photocopy of his mother's Employment Authorization Card indicating that she has been granted TPS. However, in order to qualify as the child of an alien currently eligible for TPS, an applicant must be twenty-one (21) years of age or younger at the time of filing of the Form I-821. In this case, the applicant was 22 years old when he filed his application on August 14, 2002. In addition, the applicant failed to provide any evidence that Luz Murillo was his mother. The applicant has not submitted any evidence to establish that he has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the applicant has not established that he qualifies for late registration. The application may not be approved for these reasons as well.

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.