



U.S. Citizenship
and Immigration
Services

M-1

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **AUG 03 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:
[Redacted]

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.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

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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. § 1254.

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

On appeal, counsel for the applicant states that the applicant was a minor at the time he entered the United States, and that he resided with and was under the care and supervision of his sister, who was his legal guardian until he reached eighteen years of age. Counsel asserts that although the applicant did not submit an application for TPS during the initial registration period, he is eligible for TPS as a minor child of another alien eligible for TPS at the time of the initial registration period. Counsel submits additional evidence in support of the application.

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 as 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.

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 in the United States 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, 2005, 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 reflects that the applicant filed his TPS application on September 15, 2003. The applicant stated on the TPS application that he entered the United States on June 15, 1999.

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).

On November 10, 2003, the director denied the application because he determined that the applicant had failed to establish that he had been continuously physically present in the United States since January 5, 1999. The director noted in the decision that the applicant had stated on the TPS application that he entered the United States on June 15, 1999.

On appeal, counsel for the applicant submits copies of the applicant's paychecks for the period from March 11, 2001 through February 16, 2003. Counsel asserts that the applicant is eligible for TPS because his guardian was eligible for TPS at the time of the initial registration period. However, while regulations may allow 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.

By his own admission, the applicant arrived in the United States subsequent to the eligibility period. Therefore, he cannot satisfy the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). The director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has not provided evidence to establish his eligibility for late registration. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

It is noted that the Federal Bureau of Investigation report reflects that the applicant was arrested in Long Beach, California, on September 28, 2000 and on March 15, 2001, and on each occasion was charged with one count of possession/purchase coke base for sale. These criminal offenses may render the applicant ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act, and inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. However, the court dispositions of these charges are not included in the record. CIS must address these arrests and/or convictions in any future decisions or proceedings.

It is further noted that the record of proceeding contains a Form I-205, Warrant of Removal/Deportation, issued on December 7, 2001, in San Antonio, Texas, based upon the final order of an immigration judge.

The burden of proof is upon the applicant to establish 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.