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U.S. Citizenship  
and Immigration  
Services

MI

DEC 29 2004

FILE:

Office: Vermont Service Center

Date:

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.

Robert P. Wiemann, Director  
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 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 continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999, to the date of filing his application.

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

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 TPS 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.

Further, 8 C.F.R. § 103.2 provides that any document containing foreign language shall be accompanied by an English translation:

- (b) Evidence and processing.
  - (3) Translations. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial application with Citizenship and Immigration Services (CIS), on May 15, 2003.

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).

On June 30, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States as of December 30, 1998, and his continuous physical presence in the United States from January 5, 1999, to the date of filing his application. The applicant did not respond to the director's request; therefore, the director determined that the applicant had failed to establish his eligibility for TPS and denied the application on October 17, 2003. The director noted in his decision that the applicant indicated on his application that he did not enter the United States until June 14, 2002.

On appeal, the applicant's mother, [REDACTED] states that her son is presently under treatment and suffers from a medical condition. She also states that she has already provided evidence to the Service; however, she did not provide any additional documentation on appeal.

A review of the record of proceedings reflects that the applicant has not provided any evidence establishing his continuous residence in the United States as of December 30, 1998, and his continuous physical presence in the United States from January 5, 1999, to the date of filing his application. The applicant stated on the Form I-821, Application for Temporary Protected Status, that he did not enter the United States until June 14, 2002; however, it is noted that another record, [REDACTED] relating to the applicant's removal proceedings was created based upon his apprehension near [REDACTED] on May 30, 2002. It is also noted that the applicant's mother stated on her application for re-registration for TPS, signed on May 2, 2002, that the applicant resided at [REDACTED]. Therefore, the applicant could not have met the requirements of continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

On appeal, the applicant's mother states that she has previously provided evidence of the applicant's eligibility for TPS. It appears the applicant is attempting to establish that he meets one of the eligibility requirements for late registration because his mother, [REDACTED] is eligible to be a TPS registrant. To establish eligibility for late registration, as a child of a TPS registrant, the applicant must meet the continuous residence and continuous physical presence criteria; and fully satisfy the requirements of 8 C.F.R. § 244.2(f)(2)(iv) by providing evidence that his parent was eligible to be a TPS registrant, and evidence that the applicant was a "child" during the initial registration period. It is noted that along with his TPS application, the applicant provided a copy of the Honduran birth certificate of his sister, [REDACTED]. He also provided an uncertified English translation of that document, which, however, does reflect the applicant's name and date of birth. The record is absent of the applicant's identity, namely his birth certificate, and evidence of the legal relationship between him and his mother.

As such, beyond the decision of the director, the applicant has not established his eligibility for late registration. Therefore, the application will also be denied for this reason.

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.