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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: **AUG 29 2005**

[EAC 03 209 53913]

IN RE:

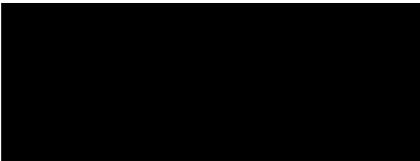
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 claims to be 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 denied the application because the applicant had failed to establish that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present from January 5, 1999, to the date of filing the application.

On appeal, counsel 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 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 § 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 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 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 July 5, 2006, upon the applicant's re-registration during the requisite time period.

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).

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed his TPS application on July 2, 2003.

The applicant indicated on both Form I-821 and Form I-765 that he entered the United States in June 1999. In support of his TPS application, the applicant furnished affidavits from two individuals indicating that the applicant has resided in the United States "from 06-99."

In a notice of intent to deny dated January 28, 2004, the applicant was requested to submit evidence to show that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999, to the date of filing the application. The director noted that the applicant was eligible for late initial registration because he is the child of a TPS registrant. In response, the applicant submitted a statement dated February 24, 2004, in which he stated, "I arrived in this country in 2000, when I was 14 years old alone, so that I could work and help support my siblings back in Honduras....I sent you proof, which you received in which I verify that I was living with my parents since my arrival in 2000 and enrolled in school."

Based on the applicant's claim of entry into the United States in 2000, the director determined that the applicant had failed to establish continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing the application.

On appeal, counsel asserts that the proof submitted earlier to establish entry into the United States is a mistake, and that he is now submitting proof of continuous residence and physical presence in the United States in 1998 and 1999. He submits:

1. An affidavit from [REDACTED] dated March 31, 2004, indicating that she has known the applicant since 1999, and that to the best of her knowledge he has not left the United States.
2. An affidavit from [REDACTED] dated April 1, 2004, indicating that she has known the applicant since December 24, 1999, and that he has never left the country.
3. A statement from [REDACTED] owner of Multi-Service Communications, dated March 31, 2004, indicating that the applicant "has been known to this office since December 5, 1998," that they have assisted the applicant's father in making money transfers, and that he used to bring the applicant with him when he was a young boy.
4. A statement from [REDACTED] D.D.S., P.C., dated March 15, 2004, indicating that the applicant "has been a patient in this office since December 10, 1998, to the present."

The affiants in Nos. 1 and 2 above failed to identify themselves, failed to list the applicant's address in the United States, and failed to indicate how they have known the applicant. Further, it is noted that they both claim to have known the applicant only since 1999, after the requisite period required to establish continuous residence. Mr. [REDACTED] (No. 3 above) had failed to indicate what record his company kept to establish that "this office" had known the applicant "since December 5, 1998." While Mr. [REDACTED] indicated that they have assisted the applicant's father in making money transfers and that he would bring his son (the applicant) with him, he also failed to submit evidence to establish that Mr. [REDACTED] brought the applicant to his establishment on that particular day (December 5, 1998). Additionally, while Mr. [REDACTED] (No. 4 above) indicated that the applicant has been a patient in his office since December 10, 1998, no medical records were furnished to support this claim. Furthermore, the statements from Mr. [REDACTED] and Mr. [REDACTED] were not attested to or notarized.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence and physical presence in the United States were not supported by any other corroborative evidence.

The applicant had claimed entry into the United States in June 1999, he subsequently claimed that he arrived in 2000, and on appeal, he again changed his claim of date of entry to 1998. An applicant raises questions of credibility when asserting a substantially revised claim to eligibility on appeal. Only after the application was denied did the applicant claim that he was in the United States since 1998. Furthermore, the applicant has submitted little evidence in support of this new claim.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify his revised claim. Therefore, the reliability of the evidence offered by the applicant is suspect.

The applicant has failed to establish that he has met the criteria for continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application 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.