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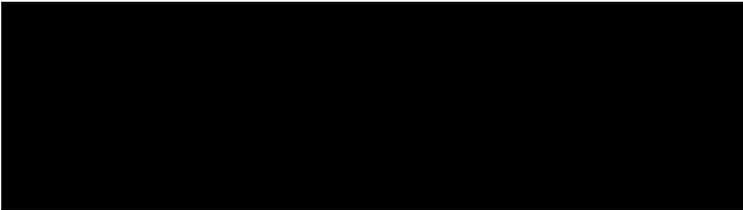
Applicant:



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.

for 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 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 been continuously physically present in the United States from January 5, 1999, to the date of filing the application.

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 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.

- (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 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 record shows that the applicant filed his TPS application on July 6, 1999. Because evidence furnished failed to establish continuous residence and continuous physical presence during the requisite period, on November 10, 1999, 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 from January 5, 1999, to the date of filing the application. In response, the applicant submitted evidence documenting his presence in the United States from October 1993 through March 1998, including a copy of his Honduran passport issued in New York on December 21, 1998, prior to the requisite period required to establish continuous residence and continuous physical presence.

The director determined that the evidence submitted failed to establish that the applicant had been continuously physically present in the United States from January 9, 1999, to the date of filing, and denied the application on June 30, 2003.

On appeal, the applicant submits:

1. A copy of a notarized affidavit signed by the applicant on January 31, 1999, authorizing his daughter, [REDACTED] to travel to Honduras with Mrs. [REDACTED] on February 3, 1999.
2. An affidavit dated July 17, 2003, from [REDACTED] stating that she rented a room to the applicant at [REDACTED] from June 1998 to June 1999, and that she also rented

to the applicant at [REDACTED] from June 1999 to September 1999.

3. An affidavit dated July 23, 2003, from [REDACTED] stating that the applicant has been in the United States since 1993, she met the applicant when his cousin [REDACTED] worked for her, the applicant lived in an extended family situation [REDACTED] and his Aunt [REDACTED] the applicant worked for her in 1995 and they have continued to stay in touch, that she and [REDACTED] are good friends and visited regularly, and the applicant was always around during the visits. Ms. [REDACTED] states that the applicant eventually moved into his own place with several other men, but when the family moved to [REDACTED] in July 1998, the applicant again moved with them. She further states that for a while, the applicant lived at [REDACTED] with his fiancée, [REDACTED] and they had a baby girl, and that during 2000-2002, the applicant moved in with [REDACTED] sister, [REDACTED] and her family at [REDACTED]
4. An affidavit dated July 26, 2003, from [REDACTED] stating that she is living at [REDACTED] that she shared her life with the applicant since 1997 at the same address, and that they have two children born in New Jersey on March 17, 1998, and on September 3, 2000. She added that she does not work; however, the applicant works and is the supporter for the family.
5. An affidavit dated July 26, 2003, from [REDACTED] stating that he has known the applicant since "5 years ago" and he has been a good friend of his, and that they go to the same church.
6. Copies of New Jersey birth certificates of his daughter born on March 17, 1998, and his son born on September 3, 2000.

The affidavits from Ms. [REDACTED] (No. 2 above), from Ms. [REDACTED] (No. 3 above), and from Ms. [REDACTED] (No. 4 above) are inconsistent and contradict each other. Ms. [REDACTED] stated that she rented a room to the applicant at [REDACTED] from June 1998 to June 1999, and at [REDACTED] from June 1999 to September 1999. Ms. [REDACTED] stated that the applicant resided with Ms. [REDACTED] at [REDACTED] from 1993 to 1998, at [REDACTED] from 1998, until he moved with Ms. [REDACTED], and that during 2000 to 2002 he moved to [REDACTED]. Ms. [REDACTED] stated that she lives [REDACTED] and that she has been sharing her life since 1997 with the applicant at the same address.

The affidavit from Mr. [REDACTED] (No. 5 above) attests to have known the applicant since 5 years ago and that they go to the same church; however, he fails to provide any specifics regarding the nature, circumstances, or origin of his acquaintanceship with the applicant, and the address where the applicant resided during the time of their acquaintance.

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 the discrepancy in the evidence he provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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 continuous physical presence in the United States were not supported by any other corroborative evidence.

The remaining evidence (No. 1 above) only establishes the applicant's physical presence as of January 31, 1999, and (No. 6 above) on September 3, 2000, after the filing of the application. No documentary evidence was furnished to establish continuous physical presence from January 1999 to the date he filed his application on July 6, 1999. The applicant claimed to have lived in the United States since 1993. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The applicant has failed to establish that he has met the criteria for continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

Beyond the decision of the director, the Federal Bureau of Investigation fingerprint results report, contained in the record of proceeding, shows that on October 31, 1993, in Morristown, New Jersey, the applicant, under the name of [REDACTED] was arrested for Count 1, assault on police, NJS 2C:12-1B(5)(A); Count 2, improper behavior, NJS 2C:33-2A; and Count 3, possession of a weapon-unlawful purpose, NJS 2C:39-4D. The final court disposition of this arrest is not included in the record of proceeding, nor is there evidence that the applicant was requested to submit the court dispositions of all of his arrests. CIS must address this arrest and/or conviction in any future decisions or proceedings.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.