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

M

[REDACTED]

FILE: [REDACTED]
[SRC 99 154 50078]

Office: TEXAS SERVICE CENTER Date: **JAN 24 2005**

IN RE: Applicant: [REDACTED]
a.k.a. [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.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 in support of the appeal.

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 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.

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 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence since December 30, 1998, and continuous physical presence since January 15, 1999, in the United States. The director further noted that the evidence of record indicates that the applicant last entered the United States on or about April 30, 2000, at or near Eagle Pass, Texas. Therefore, the director denied the application on September 4, 2003.

On appeal, the applicant states that it "is true" that he last entered the United States on April 30, 2000, but states that it was "not [his] fault." The applicant states that he had been working for a moving company on the border,

and he did not have his employment authorization document on his person at the time he was apprehended. For this reason, he states that he was subsequently arrested, and was assumed to have just entered the United States. The applicant also states: "I [have] never been outside the country between [sic] April 2, 1999 (my first application to TPS [sic]) to [the] present day." The applicant states that he needs to support himself and his mother, and has plans to study at the community college. In support of the appeal, the applicant also submits the following documentation:

1. A photocopy of the Decision of the Immigration Judge, Executive Office of Immigration Review (EOIR), Houston, Texas, dated September 15, 2000, in which the applicant in absentia was ordered removed from the United States to Honduras;
2. A photocopy of the Notice to Appear, issued at Eagle Pass, Texas, on April 30, 2000, placing the applicant in removal proceedings, and indicating his date of entry as April 30, 2000, and that bond was posted on his behalf on May 25, 2000;
3. A photocopy of the decision of the Immigration Judge, EOIR, Houston, Texas, dated August 15, 2000, granting counsel's Motion to Withdraw as counsel for the applicant;
4. Photocopies of three checks payable to the applicant from [REDACTED] DBA Moving Interiors, Houston, Texas, dated "11/5/99," "1/08/00," and "1/13/00;"
5. Photocopies of the applicant's Employment Authorization documents (EAD), under Category C19, and valid from 11/02/00 through 7/5/01, 10/18/01 through 7/5/02, and 10/16/02 through 7/5/03;
6. A photocopy of the applicant's Social Security card; and,
7. Photocopies of various CIS receipt notices acknowledging the applicant's June 9, 1999, initial application for TPS and subsequent applications for re-registration and employment authorization.

The applicant's assertion on appeal that he has never been outside the country since April 2, 1999, and that his apprehension along the United States border on April 30, 2000, was an inadvertent consequence of his employment with a moving company, is not persuasive. This account given on appeal is inconsistent with the information provided by the applicant to officers of the United States Border Patrol at the time of his apprehension at or near Eagle Pass, Texas, on April 30, 2000. At that time, as reported on the Form I-213, Record of Deportable/Inadmissible Alien, the applicant indicated that: "on or about 02/03/00 he departed from the United States and traveled back to Honduras... in order to claim the house his mother had left him because another family member was fighting the matter in court." After beginning the legal process in the Honduran court, the applicant then stated that he left his hometown in Honduras on April 5, 2000, traveling through Guatemala and Mexico, and arriving in the United States on April 30, 2000. The applicant stated he had resided in Houston "for the past 3 years" and was attempting to return to his apartment in Houston, Texas, when he was apprehended. The Border Patrol officers confirmed that the applicant had been issued an employment authorization document on November 22, 1999, under this A-number.

It is noted that the initial TPS application included photocopies of: the applicant's birth certificate with English translation; a courier receipt dated "11/10/98;" and the applicant's Texas Driver License with expiration of July 12, 2004. While the record includes some evidence indicating that the applicant was present in the United States prior to his April 30, 2000, entry into the United States, the applicant has not submitted sufficient evidence to establish his qualifying continuous residence or his continuous physical presence in the United States during the entirety of the requisite periods as designated by the Attorney General for Hondurans in order to be eligible to receive TPS. It is noted that the copies of the checks from the moving company do not reflect that the checks were cashed and, therefore, have little evidentiary value. Further, the applicant has not presented sufficient evidence establishing his initial entry into the United States, the dates of his absence from the United States, or

any additional evidence to establish that his departure from the United States would constitute a brief, casual, and innocent absence, as defined at 8 C.F.R. § 244.1. 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 temporary protected status will be affirmed.

It is noted that the record also includes a Warrant of Removal dated October 13, 2000, issued at Houston, Texas, following a final order of removal from the United States by an Immigration Judge.

It also is noted that the record contains the decision of the AAO director dated March 26, 2001, dismissing an appeal brought by counsel for the company that posted bond on the applicant's behalf, pertaining to the breach of bond, and the failure to present the applicant for removal on the required date(s).

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.