

PUBLIC COPY

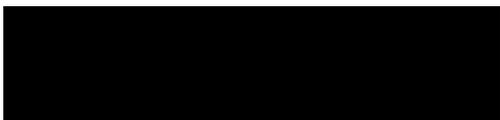
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
Washington, DC 20529

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[EAC 03 211 53657]

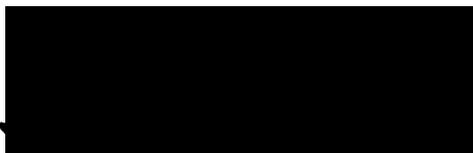
Office: Vermont Service Center

Date: JUL 18 2005

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:



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 stated 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 failed to establish his qualifying continuous residence in the United States, and his continuous physical presence in the United States.

On appeal, the applicant asserts his eligibility for TPS and submits evidence in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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 § 244.3;
- (e) Is not ineligible under § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status 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 conditions described in paragraph (f)(2) of this section.

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 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 July 3, 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 August 30, 2003, the applicant was requested to submit evidence establishing his eligibility for TPS late registration. The applicant was also requested to submit evidence to establish he is a citizen or national of Honduras, 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. In response, the applicant submitted a copy of the Employment Authorization card of his mother, [REDACTED] and a copy of his Honduran birth certificate. The director determined that the applicant failed to establish he continuously resided in the United States since December 30, 1998, and he had been continuously physically present in the United States since January 5, 1999, to the date of filing his application. The director, therefore, denied the application on April 6, 2004. The director noted in her decision that the applicant had submitted evidence establishing that he is a national of Honduras and his eligibility for TPS late registration.

On appeal, the applicant states that he has been in the United States since December 16, 1998, and he provides the following evidence in support of his claim: a copy of his birth certificate along with an English translation; copies of the Employment Authorization card of his father, [REDACTED] a copy of an Employment Authorization card for [REDACTED] copies of his Honor Roll Award from North Plainfield Middle School for the school year 1999-2000; a copy of a Social Studies Award presented on June 28, 1999, from the East End School in North Plainfield; a copy of a billing statement from [REDACTED] University Hospital dated October 23, 1999; copies of earnings statements from Superseal Manufacturing Company, Inc., dated April 8, 2000 to May 13, 2000; a copy of a letter dated April 4, 2000, from TEC Recovery Inc.; copies of earnings statements from Allan Industries, Inc. dated June 15, 2001 to October 12, 2001; copies of earnings statements from Custom Molders Corporation dated January 6, 2002 through October 2, 2002, and January 12, 2003 through June 22, 2003; a copy of a letter dated June 3, 2002, from Muhlenberg Regional Medical Center; a copy of a letter dated December 16, 2002, from the Revenue Maximization Group, Inc.; a copy of a letter dated November 12, 2002, from The Edison Radiological Group, Inc.; copies of billing statements dated December 26, 2003 and January 23, 2004, from the Muhlenberg Regional Medical Center; a copy of a residential lease dated February 1, 2004; and copies of receipt notices from the Service dated July 16, 2003, July 17, 2003, and March 22, 2004.

The documentation submitted by the applicant all post-date the beginning of the requisite time period for continuous residence and continuous physical presence in the United States. The earliest piece of evidence submitted on appeal is the Social Studies Award for the second marking period from the East End School dated June 18, 1999, which post-dates the beginning of the requisite time periods by six months. It is noted that the applicant claimed on his TPS application that he entered the United States on December 5, 1998; however, on subsequent applications for TPS, the applicant stated that he entered the United States on December 16, 1998. In addition, it is also noted that the Social Security number found on the earnings statements from Superseal Manufacturing Co, Inc. is [REDACTED] Whereas, the Social Security number found on the earnings statements from Allan Industries, Inc. is [REDACTED] It is also noted that the earnings statements from Allan Industries, Inc. reflect that the applicant claimed a taxable marital status as "married"; however, he claimed he is "single" on his TPS application. 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 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 discrepancies as noted above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect. The applicant, has, therefore, 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 on these grounds will be affirmed.

It is also noted that the record of proceedings does not contain a copy of an identity document pursuant to 8 C.F.R. § 244.9, which states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

(i) Passport;

(ii) Birth certificate accompanied by photo identification;
and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant has provided a copy of his birth certificate along with an English translation as evidence of his identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide photo identification. It also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. 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.