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



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 03 181 51513]

Office: VERMONT SERVICE CENTER

Date: MAY 09 2005

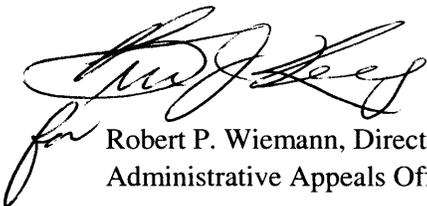
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: 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.

  
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 determined that the applicant failed to establish he had been continuously physically present in the United States since January 5, 1999. The director also determined that the applicant had failed to submit requested court documentation relating to his criminal record. The director, therefore, denied the application.

On appeal, the applicant states that he has been in the United States since 1999 and that he sent all of the requested information. The applicant also provides the requested court dispositions and evidence in an attempt to establish continuous physical presence in the United States from January 5, 1999 to the filing date of his TPS application.

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 as 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 term *continuously physically present*, as used in 8 C.F.R. § 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by CIS, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. 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.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted 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 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).

A Federal Bureau of Investigation (FBI) fingerprint report reveals that on July 23, 1994, the applicant was arrested under the name of [REDACTED] for a violation of Florida Statute § FL790.01, Carrying a Concealed Weapon, a misdemeanor; on November 10, 1994 the applicant was arrested under the name of [REDACTED] a violation of Florida Statute § FL901.31, Failure to Appear, a misdemeanor; and on April 6, 1996, the applicant was arrested under the name of [REDACTED] for a violation of Florida Statute § [REDACTED] Aggravated Assault, a felony. According to the director, the record also reveals that the Fairfax County, Virginia Sheriff's Office, arrested the applicant on September 4, 2001.

The record shows that the applicant filed this TPS application on May 19, 2003. The record also shows that the applicant filed his initial TPS application on May 22, 2000. That application was denied on December 19, 2001 because the director determined that the applicant had abandoned his application by failing to respond to a request for evidence. On August 11, 2003, the applicant was provided the opportunity to submit evidence establishing his continuous physical presence from January 15, 1999 to the filing date of the TPS application. The applicant was also requested to submit the final court disposition of every charge against him. The applicant failed to respond to the notice. Therefore, the director denied the application.

On appeal, the applicant requests that his case be reopened. The applicant provides warrants of arrests for two arrests in Virginia. On one document, a Warrant of Arrest-Misdemeanor (Local), the applicant was arrested on April 15, 2000 for a violation of Virginia Code § 18.2-266, Driving While Intoxicated, a misdemeanor. However, there is no final disposition indicated on the warrant. On the other document, a Virginia Uniform Summons, it indicates that on October 5, 2001, the applicant was convicted of a violation of

Virginia Code § 46/2-862, Exceeding Speed Limit, a misdemeanor. The applicant, however, failed to provide the requested dispositions for the Florida arrests. Consequently, the applicant failed to submit requested court documentation relating to his criminal record.

The applicant also provides:

1. Laborers International Union of North America Membership Cards valid for 1998, 1999, 2000, and 2002, union dues notices dated January 4, 1999, July 17, 2001, October 8, 2002, and November 20, 2002.
2. A Bell Atlantic notice dated July 17, 1999.
3. Copies of Virginia Motor Vehicle Registration Cards issued on July 22, 1998 and March 22, 1999.
4. A copy of an Allstate Insurance Identification Card, issued on February 8, 1999, an Allstate Insurance bill with a due date of September 8, 2002.
5. Copies of pay stubs issued on June 21, 2001, September 22, 2001, September 18, 2002, November 20, 2002.
6. A copy of a Laborer's Trust Funds Confirmation of Hours dated September 28, 2001.
7. A letter from Meadow Woods Apartments dated July 19, 2001.
8. A copy of an Application for Vehicle Registration Refund dated August 11, 1998.

These documents indicate the applicant was present in the United States prior to January 15, 1999, but fail to establish that the applicant maintained continuous physical presence in the United States from November 20, 2002 to the filing date of his application. Consequently, the director's decision to deny the application for temporary protected status 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.