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U.S. Citizenship
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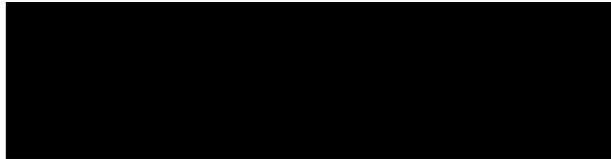


FILE: [REDACTED]
[SRC 99 260 50031]

Office: MIAMI DISTRICT

Date: **NOV 02 2005**

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.

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

DISCUSSION: The application was denied by the Miami District Director, and is now before the Administrative Appeals Office (AAO) 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 failed to establish his date of entry prior to December 30, 1999. The applicant also failed to establish his continuous residence and his continuous physical presence in the United States during the requisite periods.

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 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.

- (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. 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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on August 20, 1999.

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).

With his initial application, the applicant submitted photocopies of the following documentation: a Honduran birth certificate indicating that it was issued in El Progreso, Yoro, Honduras, on August 18, 1999, with English translation; a letter dated August 18, 1999, from [REDACTED] of Mission, Texas, stating that the applicant lived in his home from December 3, 1998 to August 14, 1999; and, a letter from the applicant dated August 18, 1999, certifying that he entered the United States through Brownsville, Texas, on December 3, 1998, and asserting that the Immigration and Naturalization Service incorrectly wrote his date of entry as August 10, 1999, on the Form I-862, Notice to Appear, which he states that he signed under pressure as he had no lawyer to explain the document to him.

On September 27, 1999, the applicant was requested to submit additional evidence establishing his date of entry into the United States, his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 15, 1999. It is noted that the Notice of Intent to Deny incorrectly stated that the applicant is a citizen or national of Guatemala.

The applicant, in response, provided photocopies of the following documentation: additional copies of the applicant's August 18, 1999 statement and his birth certificate, with English translation; and, a letter dated December 9, 1999, from [REDACTED] of Port Isabel, Texas, stating that from December 3, 1998 to August 10, 1999, [REDACTED] rented a trailer from him that was located "three miles from Port Isabel, Tex[as]" at Laguna Heights, Texas. In a letter dated December 20, 1999, counsel asserted that the letter from Mr. [REDACTED] was not prepared in the proper form due to insufficient time. Counsel indicated that formal notarized affidavits would be completed and submitted "in the next few days." To date, however, the record does not contain a formal affidavit from Mr. [REDACTED]

The director determined that the applicant failed to submit sufficient evidence establishing his date of entry into the United States, and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the director denied the application on October 31, 2003.

On appeal, the applicant states that he hopes to clarify the miscommunication surrounding his date of entry into the United States. He states that following Hurricane Mitch, he decided to come to the United States in order to support his family, crossing the borders of Guatemala, Mexico, and "finally in December of 1998 to Texas." He states that his intention was to travel to Miami, Florida, where he had friends. En route, he indicates that his money was stolen and that Mr. [REDACTED] and Mr. [REDACTED] offered him room and board, and Mr. [REDACTED] paid him for maintenance and yard work. After saving sufficient funds, the applicant states that "on July 14, 2003 [sic]," he purchased an airline ticket from Texas to Miami, Florida. Having never flown before, the applicant stated he was nervous and came to the attention of immigration officers who questioned him. He states that the officers misinterpreted his statements, erroneously concluding that he had just arrived from Honduras en route to Miami, Florida, and misinterpreted that he was a national of Guatemala. He states that he has complied with his court appearances and completed re-registration applications for TPS. In support of the appeal, the applicant submits:

1. A letter dated November 24, 2003, from the President, Unidad Hondurena/Honduran Unity, Miami, Florida, stating that the applicant has been a volunteer for the non-profit community organization since 1999;
2. A letter dated November 13, 2003, from the Controller, Cigarette Racing Team, Aventura, Florida, stating that the applicant has been employed with the company "for the last four years" and must furnish another valid employment authorization card or his employment would be terminated;

3. The Order of the Immigration Judge, Miami, Florida, dated April 26, 2000, administratively closing his case in removal proceedings because he was applying for TPS;
4. A fingerprint appointment worksheet;
5. The Form I-862, Notice to Appear, issued at Harlingen, Texas, on August 14, 1999, indicating the applicant's entry without inspection into the United States, at or near Brownsville, Texas, on or about August 10, 1999;
6. A facsimile cover sheet dated August 18, 1999, from a [REDACTED] to [REDACTED]; and,
7. CIS receipt notices and correspondence.

The record contains the Form I-213, Record of Deportable/Inadmissible Alien, created on August 14, 1999, following the applicant's apprehension by immigration officers at Valley International Airport, Harlingen, Texas, while attempting to board a flight to Miami, Florida. At that time, the applicant informed immigration officers that he left his home in Honduras "on or about July 14, 1999," traveled through Guatemala, to Chiapas, Mexico. He then traveled through Mexico and "arrived at Matamoros, Tamaulipas, Mexico on or about August 7, 1999." The applicant indicated that he entered the United States without inspection by swimming the Rio Grande River. He was apprehended while trying to board a plane bound for Miami, Florida, on August 14, 1999. The Form I-213 also indicates that the applicant gave a "false date of entry into this country of December 8, 1999 [sic]" and falsely claimed that two traveling companions were related to him "because he thought it would get him a quicker hearing date."

On appeal, the applicant claims to have entered the United States in December 1998, and worked in Texas to earn funds for the flight to Florida. The evidence submitted by the applicant consists of his own statement and the letters from two individuals attesting that the applicant resided with each of them at two different addresses during the same time frame. These statements are not supported by any corroborative evidence as specified under 8 C.F.R. § 244.9. The applicant did not submit sufficient credible evidence indicating his date of entry prior to December 30, 1998, his continuous residence, or his continuous physical presence. 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 temporary protected status will be affirmed.

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.