

**PUBLIC COPY**

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



**U.S. Citizenship  
and Immigration  
Services**

MI



FILE:



Office: Vermont Service Center

Date: **NOV 04 2005**

[SRC 99 204 52993]

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.

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 failed to respond to a request for evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant also failed to establish that he is a national or citizen of Honduras. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, the applicant asserts his eligibility for TPS and submits documentation 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. 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 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).

On July 9, 2004, the applicant was requested to submit evidence to establish 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. The applicant was also requested to submit evidence establishing that he is a citizen or national of Honduras or Nicaragua. The applicant did not respond to the director's request; therefore, the director determined that the applicant had failed to establish his eligibility for TPS and denied the application on August 17, 2004.

On appeal, the applicant provides the following evidence in support of his claim: a copy of his driving record from the Driver Records Bureau of the Texas Department of Public Safety dated May 7, 2003; copies of his driving record from the Registry of Motor Vehicles in Boston, Massachusetts dated September 2, 2004; copies of his previously filed applications for temporary protected status and employment authorization; a copy of his Massachusetts Driver's License bearing an expiration date of November 21, 2007; copies of his Honduran personal identification card issued on December 3, 1988; copies of his Form W-2, Wage and Tax Statements, for the years 2000 and 2001; copies of his U.S. Individual Income Tax Returns for the years 2001 and 2002; copies of his 2002 Massachusetts state income returns; and copies of his Honduran birth certificate along with an English translation.

The first issue in this proceeding is whether the applicant has established that he is a national or citizen of Honduras.

On appeal, the applicant submits copies of his Honduran personal identification card and his birth certificate along with an English translation. The applicant has established that he is a national and citizen of Honduras. Therefore, the director's decision to deny the application based on this issue is withdrawn.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999, to the date of filing his application.

The copy of the applicant's driving record from Texas Department of Public Safety reflects that the applicant had applied for a driver's license on January 31, 1996. However, this date pre-dates the beginning of the requisite time periods for continuous residence and continuous physical presence by almost three years. It is noted that the most recent activity on this driving record did not occur until April 12, 2001, after the requisite time periods for Honduran TPS. The tax documents although may indicate that the applicant was in the United States from 2001 to 2003; these documents do not provide the actual dates of employment and do not cover the years of 1998 through 2000. The applicant claims to have lived in the United States since 1994. It is reasonable to expect that the applicant would have some type of evidence to support his qualifying continuous residence and continuous physical presence in the United States. The burden is on the applicant to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States from January 5, 1999. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and

continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds 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 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.