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**U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 27 2006
[WAC 99 128 52175]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 his continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant submits a statement.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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.

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 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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on March 10, 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 Citizenship and Immigration Services (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 applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection on December 25, 1998. In support of his application, the applicant submitted the following:

1. a photocopy of a Form I-220A, Order of Release on Recognizance, dated January 12, 1999.

On October 16, 1999, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, submitted the following:

2. earnings statements from Solid Waste Recycling Disposal Service in La Puente, California, dated: March 17, 1999; May 5, 1999; June 16, 1999; and, September 9, 1999; and,

3. a pay stub from SWRD, Inc, dated February 25, 1999.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 23, 2000.

On appeal, the applicant states that he entered the United States without inspection near Laredo, Texas, on December 25, 1998. He explains that he found a job washing trucks in a parking lot from December 26, 1998, to December 31, 1998. The applicant further states that he was able to contact a friend in Houston, Texas, on January 5, 1999, and that the United States Border Patrol apprehended him at the Greyhound Station in Laredo, Texas, on January 6, 1999, as he was attempting to travel to Houston, Texas. The applicant states that he can't provide any evidence to establish his physical presence in the United States from December 25, 1998 to February 25, 2000, because he was always paid in cash and none of his former employers want to provide him with an employment letter to corroborate his claim.

The record reveals that the applicant was apprehended by the United States Border Patrol in Laredo, Texas, on January 6, 1999. On January 12, 1999, the applicant was placed in removal proceedings and released on his own recognizance. On January 18, 2000, an Immigration Judge in San Antonio, Texas, ordered the applicant deported in absentia when he failed to appear for his deportation hearing.

The record does not support the applicant's claim that he entered the United States on December 25, 1998. As previously stated, the record indicates that the applicant was apprehended by the United States Border Patrol in Laredo, Texas, on January 6, 1999, after having entered the United States without inspection. The applicant asserts that he worked washing trucks from December 26, 1998 to January 5, 1999 and was paid in cash, but he has not provided any evidence to corroborate his assertion. The applicant has not provided any evidence to establish his physical presence in the United States prior to January 6, 1999.

The applicant has not submitted sufficient evidence to establish his continuous physical presence in the United States throughout the requisite period. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant has also failed to establish continuous residence in the United States since December 30, 1998, as described at 8 C.F.R. § 244.2(c). Therefore, the application also must be denied for this reason.

It is noted that the record contains an outstanding warrant of removal issued by the District Director, San Antonio, on May 26, 2000.

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.