



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**
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[REDACTED]

FILE:

[REDACTED]
[SRC 99 249 51798]

Office: TEXAS SERVICE CENTER

Date: JAN 11 2006

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:

[REDACTED]

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 for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The case 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 he had resided in the United States since December 30, 1998.

On appeal, counsel submits additional evidence concerning the applicant's continuous residence and continuous physical presence in the United States.

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 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 since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed his application with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on August 18, 1999.

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 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 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).

The record contains the following documentation concerning the applicant's continuous residence in the United States from his entry until August 18, 1999, the date he filed his application:

1. An affidavit dated March 8, 2004 from [REDACTED] who states that her [REDACTED] [REDACTED] to live with her in December of 1998 in Los Angeles, California.
2. A letter from [REDACTED] dated September 30, 2003, of R&G Construction in Richardson, Texas, who states that the applicant was employed with the company from January 15, 1999 until April 15, 2002.
3. A letter from Rev. [REDACTED] dated February 22, 1999, of St. Thomas the Apostle Catholic Parish Community-Of-Faith in Los Angeles, California, who states that according to church records, the applicant is a registered member of its Parish Community and attends its church services.

On appeal, the only new evidence submitted by the applicant is the affidavit dated March 8, 2004 from his cousin, [REDACTED] listed at Item #1 above. Affidavits from family members are not, by themselves, persuasive evidence of continuous residence or continuous physical presence.

In addition, the employment letter from [REDACTED] listed at Item #2 above has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit form and is not signed and attested to by the employer under penalty of perjury. Additionally, the employment letter does not provide the address where the applicant resided during the period of his employment. Finally, the letter from Rev. Cunnane at Item #3 documents that the applicant as being a registered member of a Parish but does not appreciably enhance the applicant's claim.

The applicant has presented insufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the period from before December 30, 1998 to August 18, 1999, the date his application was filed. He has, thereby not established that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c) (*supra*). Consequently, the director's reason for denying the application is affirmed.

Beyond the decision of the director, an alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The record shows the applicant has been arrested for the following offenses:

1. On April 20, 1999, the applicant was arrested for trespass at a construction site by an officer of the Office of Sheriff in Jacksonville, Florida, a felony. The applicant was to

return to court on this charge on July 7, 1999 at the Duval County Courthouse, Florida. The final disposition of this charge is not contained in the record.

2. On March 6, 2000, the applicant was convicted of the offense of the unlawful carrying of a weapon by a Presiding Judge in County Criminal Court #3 of Dallas County, Texas, a misdemeanor.

Absent the final court determination concerning the applicant's trespass arrest listed as Item #1 above, a determination is withheld as to whether he is ineligible for TPS based upon his criminal record.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. The applicant has provided a copy of his birth certificate for consideration. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application is denied for this additional reason.

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.