



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[WAC-05-152-80921]

OFFICE: California Service Center

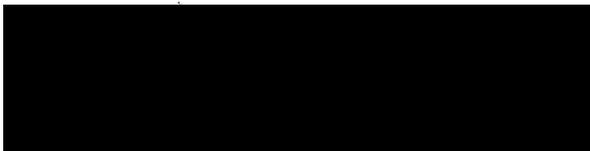
Date:

JUN 05 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:



**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*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded for further consideration and action.

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 United States Citizenship and Immigration Services' (USCIS) records show that the applicant's initial Form I-821 was denied on December 22, 2000, for failure to establish prima facie eligibility.

The record reveals that the applicant initially filed Form I-821, Application for Temporary Protected Status on March 5, 1999, under CIS receipt number SRC-99-142-50484. The application was denied by the Director, Texas Service Center, on December 21, 2000, because the applicant failed to submit documents in response to a Notice of Intent to Deny requesting additional evidence and therefore, had abandoned his application.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The applicant was requested on August 19, 2000, to submit the following:

- 1) police history and clearance checks for every city in which you have lived for the past five (5) years;
- 2) certificates of disposition for all arrests (if a charge was dropped you must obtain written confirmation that the charge was dropped from the arresting police department);
- 3) court dispositions for your convictions showing the sentence imposed (If adjudication was deferred, the disposition must show what the sentence would have been imposed if adjudication was not delayed or will be imposed if the courts decided to adjudicate;
- 4) any other evidence that shows you have never been convicted of any crimes, have never violated or attempted to violate laws relating to controlled substances that you were never given a sentence of more than 5 days more than once, or that you were never sentenced to more than 1 year.

The director stated that the applicant failed to respond to this request; therefore, the director concluded that the applicant had abandoned his application and denied the application on December 21, 2000.

On appeal, the applicant asserts his claim of eligibility for TPS and submits evidence that he complied with the above-mentioned Notice of Intent to Deny by sending his response on September 1, 2000, consisting of the following:

1. Green cover sheet with labels for case numbers SRC-99-142-50484 (I-821), SRC-99-142-51812 (I-765) and a label for file number [REDACTED]
2. Letter from the applicant stating the disposition of the two arrests.

3. Certification from [REDACTED] dated May 29, 1998 stating that the state of Florida enters a "Nolle Prosequi" on counts (1) Aggravated Child Abuse and (2) Child Abuse,
4. Disposition of Offense of Driving Under the Influence dated September 19, 1997, showing that the applicant was sentenced to 2 days in prison with credit for time served, 1 year probation plus 80 hours of community service, \$100 fine, and a six-month license suspension,
5. Early Termination of Probation dated November 21, 1997, from the County Court of the Ninth Judicial District in and for Osceola County, Florida,
6. Certificate of Bond Discharge from the Clerk of Court of the County of Osceola, Florida, dated Dec. 10, 1997, and
7. Certification from the City of Kissimmee Police Department dated August 29, 2000 that its records do not indicate that the applicant has an arrest record or traffic infraction within its jurisdiction.

The record of proceeding, therefore shows that the applicant did respond to the Service's request for evidence. The response was received by the Texas Service Center on September 1, 2000, prior to the director's decision. Therefore, the director's finding that the applicant abandoned his application will be withdrawn, and a decision will be made based on the evidence of record.

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 is eligible for temporary protected status 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 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) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
    - (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.

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 continuous residence 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, 2007, 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 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).

There is insufficient evidence in the record to establish that the applicant has continuously resided in the United States since December 30, 1998, and that he has been continuously physically present in the United States since January 5, 1999. However, the director did not make a finding on this issue in his decision, nor did the director point out this deficiency in the Notice of Intent to Deny dated August 19, 2000.

Consequently, the director's decision will be withdrawn and the case will be remanded. The director shall review all records pertaining to this applicant and issue a new decision. The director may request any evidence deemed necessary to assist him with the determination of the applicant's eligibility for TPS. As always, in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The case is remanded to the director for further action consistent with the above and entry of a decision.