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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 06 2006
[EAC 04 125 50632]

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.

for Robert P. Wiemann, Chief
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 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 that he has been continuously residing and has been continuously physically present in the United States during the requisite timeframes.

On appeal, the applicant provides a brief statement and copies of his mother's New York State Identification card and her employment authorization card.

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 issues raised by the director to be addressed in this proceeding are 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.

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 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 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.

In a notice of intent to deny dated April 27, 2004, the applicant was requested to submit evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes.

The director found that the applicant, in response to the notice of intent to deny, failed to provide evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes.

On appeal, the applicant states that he came to the United States in 1998 and lived with a friend in New Jersey. He also states that since he was a minor at the time, his mother filed his TPS application. The applicant further states that he sent all the evidence that was requested by the Service.

No documentary evidence has been presented on appeal to establish that the applicant has been continuously residing in the United States since December 30, 1998, and that he has been continuously physically present in the United States since January 5, 1999. The applicant's statement on appeal and copies of his mother's employment authorization card and her New York State Identification card are not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, although the applicant states on appeal that he "came to the United States in 1998," on both his Form I-821, Application for Temporary Protected Status, and his Form I-765, Application for Employment Authorization, it is indicated that he entered the United States on March 20, 2000. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may lead to a revaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.*, 582, 591.

In addition, documentation contained in the record consists of: a letter from the Poughkeepsie High School who states that the applicant "attempted to enroll at Poughkeepsie High School during the 2002 school year, however never completed the necessary process;" a letter dated May 21, 2004, from who states that the applicant lived in his apartment from July 1998 to December 1999; and, a letter from who states that the applicant had worked for him from July 1998 to December 1999. The record also contains one dental bill dated August 2000, and one generic rent receipt, dated July 13, 2000. As there is insufficient documentary evidence to lend support to the above-mentioned letters, such as earnings statements and credible rent receipts for July 1998 through December 1999, they carry little weight in establishing the applicant's continuous residence and his continuous physical presence in the United States during the requisite timeframes. The remaining documents do not begin until the year 2000, which is almost one year from the onset of the qualifying timeframes.

The applicant has failed to provide sufficient evidence 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 TPS 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 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.