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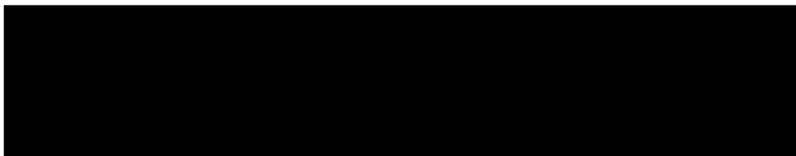
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



[SRC 01 255 54726]

OFFICE: Texas Service Center

DATE:

JUN 14 2007

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: 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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on June 6, 1999, at the Texas Service Center [SRC 99 198 52423]. That application was denied on September 29, 1999, because the record indicated that the applicant did not enter the United States until March 2, 1999, and therefore had not been continuously resident in the United States since December 30, 1998, and continuously physically present in the United States since January 5, 1999, as required for TPS applicants from Honduras. The applicant did not appeal that decision.

The applicant filed a second Form I-821 with the Texas Service Center on August 1, 2001, though he identified it as his first TPS application. On August 21, 2002, the TSC Director issued a Notice of Intent to Deny (NOID) in which the applicant was requested to submit evidence of his national identity; that he was eligible for late TPS registration; and that he had resided in the United States continuously since December 30, 1998. The applicant responded on September 6, 2002, with evidence of his national identity. On September 12, 2002, the TSC Director issued a Notice of Decision denying the application on the ground that the applicant had not established his continuous residence in the United States since December 30, 1998.¹ The applicant filed a timely appeal, stamped as received by the Texas Service Center on September 30, 2002. The appeal was accompanied by photocopied letters from an individual in Carrollton, Georgia, who asserted that the applicant lived at property he managed from August 3, 1998, to September 30, 1999, together with generic rental receipt forms dated August 3, 1998; September 5, 1998; May 2, 1999; and May 5, 1999.

The above referenced correspondence and rental receipts are the only evidence of the applicant's presence in the United States prior to 1999. These materials are contradicted, however, by a Form I-213, Record of Deportable/Inadmissible Alien (Form I-213), in the file which confirms that the applicant was in Honduras in early 1999, that he left the country on January 15, 1999, to began a journey northward that ultimately brought him to the U.S border in late February 1999, and that he was apprehended upon entering the United States without inspection on March 2, 1999. The AAO notes that the applicant gave March 2, 1999, as his date of entry into the United States in his initial TPS application, though in subsequent applications he asserted that he entered the United States in May 1998. It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the petitioner's evidence reflects on the reliability of the petitioner's remaining evidence. *See id.* In view of the Form I-213 in the record, the documentation submitted by the applicant on appeal indicating that he resided in Carrollton, Georgia, as early as August 1998 lacks credibility.

¹ On January 12, 2003, the TSC Director issued a second Notice of Decision on the same application, which was sent to the applicant's new address. The application was again denied for failure of the applicant to establish that he had resided continuously in the United States since 1998, as well as his failure to establish that he qualified for late TPS registration. No separate appeal was filed on this decision.

The regulation at 8 C.F.R. § 244.9(b) provides that:

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.

The AAO determines that the applicant has failed to submit credible documentary evidence to satisfy his burden of proof that he has resided continuously in the United States since December 30, 1998, and that he has been continuously physically present in the United States since January 5, 1999, as required for TPS applicants from Honduras. Accordingly, the director's denial of the application will be affirmed.

Additional evidence obtained during the adjudication of a subsequent re-registration application indicates that the applicant has been convicted of at least two misdemeanor offenses committed in the United States, which makes him ineligible for TPS under section 244(c)(2)(B) of the Act.² For this additional reason the application cannot be approved.

The AAO notes that a Warrant of Removal was issued for the applicant on May 31, 2000, by the District Director in San Antonio, Texas, which is still outstanding.

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, or 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 that burden.

ORDER: The appeal is dismissed.

² On December 1, 2004 the applicant filed an application to re-register for TPS with the California Service Center (CSC). That application [WAC 05 062 78132] was denied by the CSC Director on August 31, 2005, on the ground that the initial TPS application was denied on September 29, 1999, making the applicant ineligible to re-register for TPS. Though the applicant filed a timely appeal, the CSC Director elected as a procedural matter to reopen the proceeding on Service motion without appeal on October 17, 2005, because it had received a report from the Federal Bureau of Investigation (FBI) based on the applicant's fingerprints, dated June 21, 2005, that the applicant had been arrested twice by the police department in Carrolton, North Carolina. On January 19, 2006, the CSC Director issued a NOID in which the applicant was requested to submit the final court disposition(s) of his two arrests (as well as evidence of his identity). In response the applicant submitted the final court dispositions showing that both arrests led to convictions – one of which was for driving under the influence and the other of which was for child abandonment/non-support. On March 23, 2006, the CSC Director issued a Notice of Decision denying the application on the ground that the applicant had been convicted of a felony or two or more misdemeanors committed in the United States, making him ineligible for TPS under section 244(c)(2)(B) of the Act. The applicant did not appeal that decision.