

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

M1

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

OCT 03 2007

[EAC 06 250 81391]

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.

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, Vermont 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 that he had continuously resided in the United States since December 30, 1998; and had been continuously physically present in the United States since January 5, 1999.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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 January 5, 2009, upon the applicant's re-registration during the requisite 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).

The applicant initially submitted as evidence copies of his school records dated 2005 and 2006, and a copy of his birth certificate with English translations.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States, and denied the application on January 27, 2007.

On appeal, counsel states that the applicant is eligible for TPS because his parent and stepparent are TPS registrants, and that the continuous residency and continuous physical presence requirement are waived for derivative beneficiaries. Counsel also states that the applicant filed his TPS application during the most recent re-designation period for Hondurans. Counsel infers that the TPS application should be granted based upon humanitarian reasons.

Contrary to counsel's assertions, while regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period has closed, these regulations do not relax the requirements for eligibility for TPS as detailed in 8 C.F.R. §§ 244.2(a) through (e). The applicant acquired no "constructive residence" based upon his parent and/or stepparent's continuous residence in the United States, the applicant must submit sufficient independent evidence to demonstrate that he, not his parent or stepparent, has continuously resided in the United States since December 30, 1998, and has been continuously physically present in the United States since January 5, 1999. The applicant acquires no derivative status from his parent or stepparent, nor does "constructive residence" apply under TPS regulations and statutes. There are no further humanitarian provisions under the TPS program to provide for such relief. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the applicant admits in his Application for Temporary Protective Status, Form 1-821, Part 2, to entering the United States on March 5, 2005. This date is subsequent to the initial TPS registration period for Hondurans. Therefore, the applicant is unable to establish his continuous residence since December 30, 1998, and his continuous physical presence since January 5, 1999, in the United States as is required by 8 C.F.R. § 244.2(b) and (c). For this additional reason, the appeal will be dismissed.

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.