



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **FEB 06 2008**

[EAC 07 233 52296, *appeal*]
[EAC 99 258 51185]

INRE:

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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 was granted TPS on March 28, 2000. The director subsequently withdrew the applicant's status and denied the re-registration application on July 11, 2007, when it was determined that the applicant had failed to respond to a Notice of Intent to Withdraw (NIW), requesting that he submit evidence to show that he had been granted permission to leave the country for approximately two and a half years.

A Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted by an individual who indicates that he is a reputable United States citizen of good moral character who has a "pre-existing relationship with the petitioner." However, he is not authorized to represent the applicant because he has not submitted a written declaration that he is appearing without direct or indirect remuneration as required

at 8 C.F.R. § 292.1(a)(3)(ii). Also, the individual's organization name is

is not authorized under the regulations at 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, he shall be considered as self-represented and the decision shall only be furnished to him.

On appeal, the applicant states that he did not receive the director's NIW dated April 11, 2007.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 8 C.F.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations at 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.
- (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 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).

On March 28, 2003, the applicant applied for admission into the United States from Mexico through the San Ysidro, California, Port of Entry as a pedestrian. On March 29, he was interviewed by an Immigration Inspector

concerning his request to be admitted to the United States. His interview was recorded on a Form 1-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, which he signed on March 29, 2003. At his interview, he stated that he lived in the United States for about eleven months in 2000 and then he returned to Honduras for personal reasons. He further stated that he had been living abroad for about two and one-half years prior to attempt to enter this' country on the previous day. The applicant's Form 1-296, Notice to Alien Ordered Removed/Departure Verification, shows that he was removed from this country on **Flight**" departing from Los Angeles International Airport.

On appeal, the applicant states that he did not receive the director's NIW dated April 11, 2007. The director sent the notice to the person that the applicant had indicated as his representative at that time. Even if the applicant's statement is true that he did not receive the director's NIW that fact would not overcome his March 29, 2003 statement that he had remained outside the United States for about two and one-half years beginning in 2000, thereby breaking the continuity of his residence and physical presence in this country.

The applicant has not established his qualifying continuous residence or continuous physical presence in the United States during the period from late 2000 until March 28, 2003 and from March 29, 2003 until the date he presumably returned to this country. Therefore he has not shown that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to withdraw TPS 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 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.

ORDER: The appeal is dismissed.