

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

M₁

PUBLIC COPY

[REDACTED]

FILE: [REDACTED] Office: Vermont Service Center Date: FEB 26 2008
[EAC 07 006 80380]

IN RE: Applicant: [REDACTED]

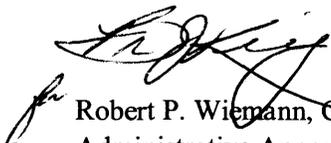
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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.


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 claims to be a 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: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999.

On appeal, counsel for the applicant states that USCIS erred in finding the applicant ineligible for TPS under late initial registration because he is the child of a TPS registrant. The director also noted that the applicant had not submitted a national identity document.

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. The designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2009, 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).

The applicant submitted his TPS application on October 6, 2006. Counsel for the applicant provided the following documentation:

1. A copy of the applicant's father's EAD Card valid from March 1, 2005 to July 5, 2006;
2. A copy of the applicant's Honduran birth certificate and an English translation;
3. A photo copy of the applicant's picture; and,
4. Copies of checks payable to USCIS.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on December 8, 2006.

On appeal, counsel for the applicant reasserts that at the time of the initial registration, the applicant was a minor child of a TPS registrant.

The applicant has established his eligibility for late initial registration. However, while regulations may allow children of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. Although the child of an eligible TPS registrant is eligible to submit a late initial registration, the child is still required to meet the continuous residence and continuous physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c).

The applicant stated on his TPS application and the record reveals that the applicant did not enter the United States until February 9, 2006. According to the Form I-213, Record of Deportable/Inadmissible Alien, the applicant, along with his mother and cousin, were apprehended on February 9, 2006 as they tried to enter into the United States illegally. The applicant's mother acknowledged his entry date in her statement to a U.S. Border Patrol officer. Therefore, the applicant did not reside in the United States as of December 30, 1998, and was not physically present in the United States from January 5, 1999 to the filing date of this application.

The applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite period. He has, thereby, failed 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 will be affirmed.

The record contains a copy of the applicant's Honduran birth certificate, however, he has not submitted a copy of a photo identification or a national identity document to establish the applicant's identity as required by 8 C.F.R. §244.9(a)(1). It is noted that the applicant stated on page one of the TPS application that he is a citizen of Honduras, however, he stated on page two of that Form I-821 that he is Salvadoran. Therefore, the director's decision to deny the application on this ground is also affirmed.

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.