

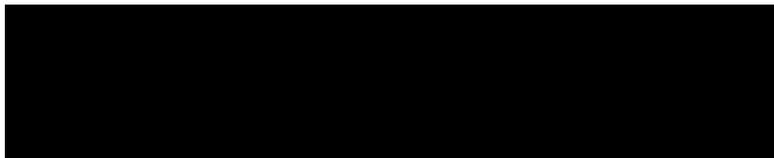


U.S. Citizenship  
and Immigration  
Services

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FILE:

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OFFICE: ST. PAUL, MN (SPM)

DATE: JAN 29 2008

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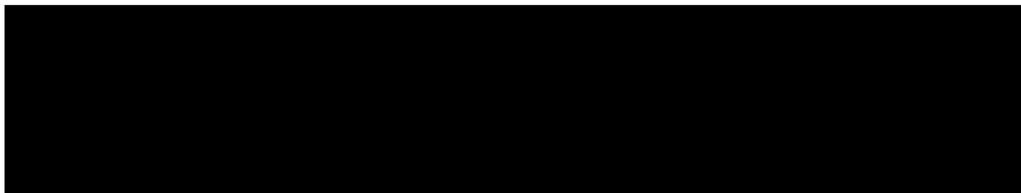
Applicant:



APPLICATION:

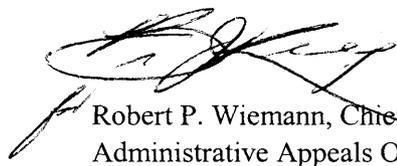
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, St. Paul, Minnesota (SPM), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record of proceeding shows that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) on January 16, 1999, during the initial registration period. The TPS application was approved on June 22, 2000. On August 26, 2004, the District Director, SPM, withdrew the applicant's TPS because the applicant left the United States without advance parole and was apprehended by the United States Border Patrol at the McAllen, Texas, International Airport on November 1, 2002, after entering the United States without inspection at or near McAllen, Texas, on or about October 30, 2002.

The applicant filed an appeal through counsel on September 15, 2004. On appeal, counsel for the applicant asserts that the applicant's departure from the United States was brief, casual, and innocent, and therefore, he was not required to seek advance parole, and his departure does not constitute a break in his continuous residence and continuous physical presence in the United States. In support of the appeal, counsel submits a brief and an affidavit from the applicant in which he attests that he went to the border of the United States to accompany a friend who was traveling back to Honduras. The applicant states that he "didn't fill out a petition to immigration to leave because as a Honduran [he] had TPS status." He also states that he tried to return to the United States via Reynosa, Mexico, but was not permitted to reenter by Immigration Officers. He further states that the following day he then entered the United States illegally near Hidalgo, Texas, and was arrested at the airport while attempting to return to Minnesota. The Form I-213, Record of Deportable/Inadmissible Alien, indicates that the applicant told Immigration Officers that he had lived legally in the United States since 1998, and had employment authorization. The Form I-213 also indicates that the applicant stated that he went to Mexico on October 28, 2002 to "visit family," and that he was aware that he was not allowed to leave the country during his stay in the United States. The record also contains a copy of a Mexican Driver's License that was issued to the applicant on October 29, 2002.

It is noted that while this appeal was pending on the withdrawal of the applicant's TPS, the applicant continued to receive notices for a hearing before the Executive Office of Immigration Review (EOIR) as he had been placed in removal proceedings at the time of his November 1, 2002, apprehension by the United States Border Patrol. The record contains the Order of the Immigration Judge, Bloomington, Minnesota, dated July 20, 2005, indicating that the proceedings were Administratively Closed and considered as no longer pending because: "respondent granted TPS." The record also contains the most recent Form I-821, Application for Temporary Protective Status, filed by the applicant on December 2, 2004, under CIS receipt number WAC 05 061 70980, and the CIS receipt notices reflecting that the Form I-821, Application for Temporary Protective Status, was approved with validity from January 5, 2005 through July 5, 2006, and that the employment authorization application also was approved under Category A12, with validity from April 9, 2005 to July 5, 2006.

Counsel asserts that the regulation at 8 C.F.R. § 244.15 reiterates the requirement that TPS recipients must maintain continuous residence and continuous physical presence in the United States, and that those with TPS status "should seek advance parole before departing the U.S." Counsel also asserts that the mention of advance parole, however, does not negate the continuous physical presence requirement, and since continuous physical presence is not interrupted by a brief, casual, and innocent absence from the United States, the applicant was not required to obtain advance parole.

The record reflects that the Immigration Judge, Bloomington, Minnesota, granted the applicant TPS during a proceeding held on July 20, 2005. The record also shows that the California Service Center Director subsequently issued the applicant approval of his TPS based upon his most recent application for re-registration. Therefore, this appeal shall be summarily dismissed as moot, and the argument of counsel will not be addressed.

**ORDER:** The appeal is dismissed as moot.