

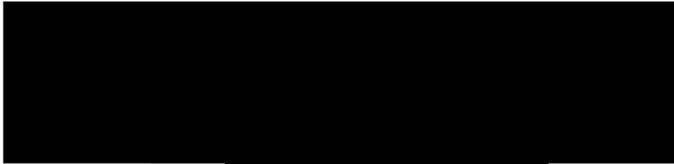
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
[EAC 07 215 52988, *appeal*]
[EAC 06 235 74695]

Date: **MAR 25 2008**

INRE: 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:



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.

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 claims to be a native and citizen of Honduras who is applying for Temporary Protected Status (fPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director found that the applicant had not established that he had been continuously physically present in the United States since January 5, 1999, or that he had continuously resided in this country since December 30, 1998.

On appeal, counsel explains that an Immigration Judge ordered that the case be administratively closed so that the applicant's TPS application could be considered. Counsel argues that the applicant is **eligible** for a waiver for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest under **Section 1182(a)**

□ counsel submits an evaluation report dated October 19, 2007, from a psychologist named _
., outlining the potential harm that could **befall** the applicant and his family should they be deported to Honduras.

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 temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

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 since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed his application with Citizenship and Immigration Services on May 23, 2004.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated May 23, 2004, indicating that the United States Border Patrol apprehended the applicant after he illegally entered the United States near Brownsville, Texas, on or about May 17, 2004. Therefore, he cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c) which require his continuous residence in the United States since December 30, 1998, and his continuous physical presence in this country since January 5, 1999. Consequently, the director's decision to deny the application for TPS is affirmed for these reasons.

Counsel argues that the applicant is eligible for a waiver for humanitarian purposes, to assure family **unity**, or when it is otherwise in the public interest under Section 1182 a of the Act. Counsel submits an evaluation report dated October 19, 2007, from a **psychologist** name _____ outlining the potential harm **that** could **befall** the applicant and his family should they be **deported to Honduras**.

With regard to the current proceeding, counsel's assertions are not persuasive. The applicant did not enter the United States until on or about May 17, 2004. Therefore, he cannot satisfy the continuous residence and continuous physical presence requirements. Furthermore, there are no waivers available for the basic TPS **eligibility** requirements under 8 C.F.R. § 244.2 **that** would allow the approval of the application as a matter of discretion.

The applicant has provided no evidence to establish that he is a national or citizen of Honduras. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). The director's decision is affirmed for this additional reason.

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 has the burden of proving that he or she meets the requirements cited 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.