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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAR 29 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

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: SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

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

The director determined that the applicant failed to establish that he has continuously resided in the United States since December 30, 1998, and has been continuously physically present since January 5, 1999 to the date of filing the application. The director, therefore, denied the application.

On appeal, the applicant states that he is fourteen years old and that he is the only child of an alien who has been granted TPS. He states that he applied for TPS based on the approval of his mother's application.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 condition described in paragraph (f)(2) of this section.

Continuously physically present 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.

Continuously resided 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 and Nicaraguans 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 current extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The application for TPS, filed on May 23, 2001, shows that the applicant claimed to have entered the United States without inspection in October 1999.

On September 19, 2001, the applicant was requested to submit: (1) evidence to show that he is a citizen or national of Nicaragua or Honduras; (2) evidence to show that he has continuously resided in the United States since December 30, 1998; and (3) evidence to show that he has been continuously physically present since January 5, 1999. In response, the applicant submitted the following evidence:

(1) a copy of his passport which indicates that it was issued in New York on November 6, 2000;

(2) a letter dated August 14, 2000, from the principal, Abraham Lincoln Summer High School, Brooklyn, New York, which indicates the applicant has attended summer school classes;

(3) a letter from the Guidance Counsel at Abraham Lincoln High School, Brooklyn, New York, which indicates the applicant was registered at the school from September 2000 to September 2001, and that he was enrolled in summer school from July 5 to August 16, 2001;

(4) a School Provisional Admittance Form dated November 10, 1999 from the Department of Health, The City of New York, which states that the applicant was seen at the immunization clinic on that date;

(5) copies of the applicant's lifetime immunizations record [which was copied on September 25, 2000]; and,

(6) a medical appointment card for the applicant's visits to a chest clinic in Brooklyn, New York, during the period May 2000 to November 2000.

The director determined that the evidence furnished was insufficient to establish that the applicant has continuously resided in the United States since December 30, 1998, and has been continuously physically present since January 5, 1999 to the date of filing the application.

The applicant, on appeal, submits copies of evidence previously furnished and contained in the record of proceeding. The applicant states he is the child of a TPS applicant, and he submits a copy of his mother's Form I-766, Employment Authorization Card, and a copy of a Form I-821 application for TPS in her name. However, all aliens registering for temporary protected status must demonstrate that they have met the physical presence and continuous presence requirements. The applicant stated on his Form I-821 application that he entered the United States on October 19, 1999. Therefore, the applicant could not have continuously resided in the United States since December 30, 1998 and been continuously physically present since January 5, 1999. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The burden of proof is upon the applicant to establish 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.