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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 11 2004

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.

for Robert P. Wiemann, Director
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 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. § 1254.

The director determined that the applicant had failed to submit evidence to establish continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The director, therefore, denied the application.

On appeal, the applicant claims that his mother filed an application for TPS on June 27, 2002, and that his name was included on her application. The applicant states that his mother did not know that she had to file a separate application for him at the time she submitted her own application for TPS.

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 as 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, 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.

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, 2005, 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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 27, 2002. The applicant submitted a copy of his mother's employment authorization document with his application. In support of his application, the applicant submitted a copy of a diploma awarded to him on June 21, 2002, by the Roosevelt School of the New Brunswick Public Schools system.

On October 9, 2002, the applicant was requested to submit evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence since January 5, 1999. In response, the applicant submitted the following documentation:

1.) a notice of financial responsibility issued by Saint Peter's University Hospital, New Brunswick, New Jersey, on November 10, 2000;

2.) an identification card issued by the HUB Teen Center, Division of Recreation, on November 22, 2000;
3.) a Pupil Progress/Parent Report for grade 8B for the school year 2001, issued by the New Brunswick Public Schools;
4.) a grade report for the 2000-2001 school year from the New Brunswick Public Schools; and,
5.) a grade report for the 2001-2002 school year from the New Brunswick Public Schools.

On January 9, 2003, the applicant was again requested to submit evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence since January 5, 1999. In response, the applicant submitted the following documentation:

6.) three grade reports from the New Brunswick Public Schools, purported to be for the school years 1998-1999, 2000-2001, and 2001-2002; and
7.) a statement from Saint Peter's University Hospital, purportedly a notice of eligibility for benefits for the from period February 26, 1999 to November 26, 1999.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods. On April 25, 2003, the director denied the application.

On appeal, the applicant claims that his mother is a TPS registrant, and that she did not know that it was necessary to file a separate application for him at the time she submitted her own application for TPS. While regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period has closed; these regulations do not relax the requirements for eligibility for TPS. The issue in this case is not when the application was filed, but the applicant's failure to submit sufficient credible evidence to establish that he has met the continuous residence and physical presence criteria for TPS.

The photocopied school reports and statement of eligibility detailed in Nos. 6 and 7, above, appear to have been altered, as the original years on the statements have been covered-over and new dates inserted in the spaces. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Therefore, the reliability of the remaining evidence offered by the applicant is suspect, and it must be concluded that the applicant has failed to satisfy the residence and physical presence requirements described in 8 C.F.R. § 244.2(b) and (c), listed above. 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.