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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 25 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.

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. § 1254a.

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

On appeal, the applicant states that his mother has been approved employment authorization. He submits additional evidence.

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.

The term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. 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.

The term *continuously physically present* as used in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since January 5, 1999. 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 record reflects that the applicant filed his TPS application on May 22, 2002. He indicated on his TPS application that he entered the United States in December 1998. On July 8, 2002, the applicant was requested to submit: (1) two color photographs; (2) evidence that he has continuously resided in the United States since December 30, 1998; and (3) evidence that he has been continuously physically present in the United States since January 5, 1999 to the date the application was filed. The director noted that the applicant, in response, only provided new photographs. He, therefore, denied the application based on the applicant's failure to provide evidence of his continuous residence and continuous physical presence in the United States during the requisite period.

The applicant submits, on appeal, a letter dated August 8, 2002 from his employer, Alfred Mfg., confirming his employment with the company. The letter of employment, however, does not include the date of the applicant's employment with the company. Nor did the applicant submit any evidence to establish that he has continuously resided in the United States since December 30, 1998, and that he has been continuously physically present since January 5, 1999 to the date the application was filed.

The applicant asserts, on appeal, that he is eligible for TPS because his mother had been granted TPS. However, while regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS.

The applicant has failed to submit sufficient evidence to satisfy the residence and physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his eligibility for late registration. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

The burden of proof is upon the applicant to establish that he 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. The appeal will, therefore, be dismissed.

ORDER: The appeal is dismissed.