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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M,

[REDACTED]

FILE: [REDACTED]
[EAC 06 245 75913]

Office: VERMONT SERVICE CENTER

Date: OCT 03 2007

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:

[REDACTED]

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 "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), 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 (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 01 257 55082. The Director, Texas Service Center, denied that application on September 11, 2002, after determining that the applicant had abandoned his application by failing to respond to a request for additional evidence. The applicant filed the current application under receipt number EAC 06 245 75913. The VSC Director determined 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 provides evidence that the applicant is attempting to obtain a passport from the Honduran Consulate and submits additional evidence to establish the applicant's continuous residence and continuous physical presence in the United States. Counsel requests that his application be approved.

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.

The phrase *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.

The phrase *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, 2009, upon the applicant's re-registration during the requisite 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).

On appeal, the applicant reasserts his claim and provides new evidence which includes four rental receipts from his landlord [REDACTED] that [REDACTED] found in an old shoe box at his home. The applicant also submits a letter dated March 21, 2007, from [REDACTED] from Corpus Christi, Texas. [REDACTED] states that he knew the applicant to be in the United States since January 1999.

However, the record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated November 15, 2005, under the name [REDACTED] in which the applicant informs a Border Patrol Agent that he left his home country on or about February 15, 1999 by bus traveling north until he reached the Guatemala border where he entered legally with a visitor's permit the same day. He states that he continued to travel north until he reached

the Mexican border where he entered illegally. The applicant states that once in Mexico, he continued to travel north by bus and by foot until he reached the United States border. The applicant further states that he arrived in Matamoros, Mexico and he stayed in the city for a few days before crossing the river. He relates that he tried to cross into the United States several times and was apprehended by the Border Patrol each time. At these times, he states that he claimed to be a citizen of Mexico so he could return to Mexico in order to attempt another illegal entry. He states that on May 5, 2000, he was finally able to cross into the United States illegally without detection.

At his November 15, 2005 interview, the applicant established that he entered this country on May 5, 2000. Therefore, he cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status is affirmed.

Beyond the decision of the director, the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. He has provided a copy of a birth certificate along with an English translation and evidence that he has applied for a passport. However, a birth certificate and a passport application alone do not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Therefore the application shall be denied for this reason as well.

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.