

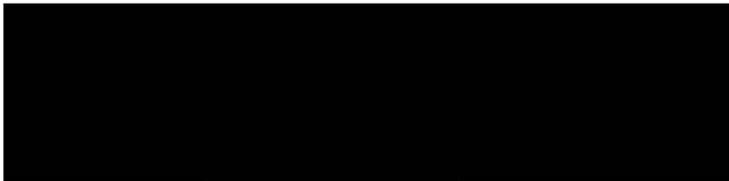


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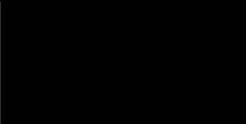
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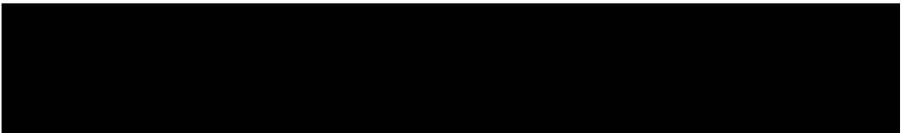


Office: OKLAHOMA CITY, OKLAHOMA
as it relates to: EAC 99 142 50095]

Date: FEB 26 2008

INRE:

Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: An initial application was denied by the Director, Yermont Service Center (YSC). The re-registration application was then denied by the Officer in Charge of the Oklahoma City office. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The director's decision will be withdrawn and the appeal will be sustained.

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 applicant filed his initial TPS application on February 4, 1999, under receipt number EAC 99 142 50095. The Director of the YSC denied that application on June 30, 2000, due to abandonment because the applicant failed to respond to a request for evidence.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on December 9, 2004. The Officer in Charge of the Oklahoma City office denied this application because the applicant had not previously been granted TPS. The Officer in Charge noted in his decision that the applicant's initial TPS application had been denied.

On appeal, counsel asserts the applicant's eligibility for TPS and submits additional documentation in support of this claim.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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 since January 5, 1999.

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 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, counsel states that the applicant was not aware of any prior denial decisions, and that the applicant had registered for TPS during each subsequent registration period. Counsel also argues that the current application was improperly denied, and he submits additional evidence in support of the applicant's eligibility for TPS.

A review of the record reflects that the TSC director sent the June 30 2000 denial decision to an incorrect address of [redacted] in Brooklyn, New York, instead of [redacted] Brooklyn, New York.

Furthermore, on appeal, counsel provides additional documentation in support of the applicant's qualifying continuous residence and continuous physical presence in the United States. A complete review of the record of proceedings reflects that the applicant has provided sufficient evidence to establish his qualifying continuous residence in the United States since December 30, 1998, and his continuous physical presence since January 5,

1999, as required for Honduran TPS. Given that the record fails to reflect any other ineligibility issues, the VSC director's decision will be withdrawn and the initial application will be approved.

An alien applying for temporary protected status has the burden of proving 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 met this burden.

ORDER: The VSC director's decision is withdrawn. The appeal is sustained and the applications are approved.