U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] [LIN 02 244 50030] Office: NEBRASKA SERVICE CENTER Date: AUG 29 2005

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 director denied the application because the applicant failed to establish that he had entered the United States by December 30, 1998.

On appeal, the applicant states:

> For four years I have been filing for the TPS Program, I explained to you my case. When I first came I was a minor and my father [redacted] His TPS Card is number [redacted] I explained to you in the past that I came to the United States on November 1998 and you returned me to the other side. You took pictures of me and I do not recall if you fingerprinted me. On December 31, 1998 I entered again and discovered that my parents were living in Washington DC. My father traveled to Arizona and on February 22, 1999 and left me with some relatives in Waukegan. When he applied for me on 1999 he put the date of February 22, 1999 and not November 1998 as was supposed to write. I believe I have the privilege to have the card because I was here before December 31, 1998 (even thou you took me to the other side, I was a minor and my father is in possession of the TPS permit. I believe you have the most clear evidence of my case because you apprehended me and you have all my history. For four years I am insisting of what I believe is the true and nothing but the true. I appreciate very much your help and understanding of my plea.

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 July 5, 2006, 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).

The record reveals that the applicant filed a Form I-821, Application for Temporary Protected Status, on June 12, 2000, during the initial registration period. That application reflects that the applicant entered the United States without inspection near Tucson, Arizona, on March 21, 1999. The director determined that the applicant was ineligible for TPS because he did not enter the United States by December 30, 1998. The applicant's appeal to the director's determination was dismissed by the AAO on July 11, 2001.

On appeal to the decision concerning this Form I-821 filed on July 12, 2002, the applicant asserts that after being removed from this country in November 1998, he reentered on December 31, 1998. However, he does not submit evidence to support this assertion. However, even had the applicant proven that he entered this country on December 31, 1998 instead of on March 21, 1999 as stated on both of his applications, he would still be ineligible because he would not have continuously resided in the United States since December 30, 1998. Consequently, the director's decision to deny the application for TPS is affirmed.

An alien applying for TPS 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 failed to meet this burden.

ORDER: The appeal is dismissed.