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

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FILE:

Office: VERMONT SERVICE CENTER

Date:

JUN 23 2005

[EAC 03 238 56359]

IN RE:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant states that he was unable to submit employment records or school records from 1999 because he was not employed or attending school during that time. The applicant also states that he was unable to provide medical records from 1999 because he did not see a physician during that period, and that he was unable to provide bank or insurance records from 1999 because he was not old enough to have a bank account or to insure an automobile during that period.

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 designated by the Attorney General 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 in the United States since January 5, 1999. 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 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).

On September 11, 2003, the applicant was requested to submit evidence establishing his continuous residence since December 30, 1998, and continuous physical presence since January 15, 1999, in the United States. The applicant, in response, provided the following documentation:

1. A letter dated May 7, 2003 from [REDACTED] Chairman of National Academic Affairs, Who's Who Among American High School Students bearing the applicant's name and Central Falls, Rhode Island, address;
2. A copy of the applicant's school records from [REDACTED] Middle School dated January 28, 2002, to June 17, 2002;
3. A copy of the applicant's school records from [REDACTED] High School dated August 28, 2002, to April 2, 2003;

4. A copy of eye exam tests results dated September 19, 2000, and bearing the applicant's name;
5. A copy of a Honor Roll Award dated April 10, 2003, and bearing the applicant's name;
6. A copy of a graduation certificate from [REDACTED] School dated June 14, 2002; and
7. A copy of the applicant's school photo identification cards dated 2000 through 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 4, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and resubmits copies of his school records, certificates of achievement, and eye exam results. The applicant also submitted the following documentation:

8. A copy of a lease agreement dated December 1, 1999, and bearing the applicant's name as one of the four apartment occupants.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 15, 1999. The evidence submitted by the applicant does not demonstrate his presence in the United States until December 1, 1999; there has been no documentation submitted to demonstrate the applicant's presence and residence in the United States prior to that date. The applicant has failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be 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.