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**U.S. Citizenship
and Immigration
Services**

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FILE:

[REDACTED]
[SRC 99 189 50149]

Office: TEXAS SERVICE CENTER

Date:

NOV 23 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was initially approved by the Director, Texas Service Center. Subsequently, the director issued a request for additional evidence and then denied the application due to abandonment. The matter is now before the Administrative Appeals Office (AAO) on appeal. The applicant's TPS will be withdrawn and the appeal will be dismissed.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. § 1254.

The director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for final court dispositions regarding his arrest on August 11, 1999, by the Collier County Sheriff's Office, and charges of "CRUELTY TOWARD CHILD-ABUSE," Statute/Ordinance FL827-03, a Felony.

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 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 6, 2006, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

Pursuant to 8 C.F.R. § 244.14(a)(1), the director may withdraw the status of an alien granted TPS at any time if the alien was not in fact eligible at the time such status was granted, or at any time the alien thereafter becomes ineligible for such status. The director may also withdraw TPS for the applicant's failure to maintain continuous physical presence, and for failure without good cause to register annually within 30 days before the end of each 12-month period after the granting of TPS. 8 C.F.R. § 244.14(a)(2) and (3).

The record reveals that the applicant filed his initial TPS application on June 3, 1999. On March 21, 2000, the applicant was issued a TPS approval notice. Subsequently, on March 22, 2000, the applicant was requested to submit additional evidence to establish his eligibility for TPS, consisting of the final court disposition for his 1999 arrest by the Collier County Sheriff's Office, Florida, as listed above.

The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the TPS application on November 18, 2000. The director erroneously advised the applicant that there was no appeal to the decision, and that the decision was without prejudice to consideration of subsequent applications. The director also did not state that he was withdrawing the applicant's TPS.

On December 23, 2003, the applicant attempted to file TPS and employment authorization applications marked as re-registration, or extension, applications.

On February 12, 2004, the applicant filed this appeal, attaching a blank form letter, presumably sent to the applicant, in which the Texas Service Center advised that an application had been denied and that, therefore, there was no need to register annually. The applicant did not submit any additional evidence with the appeal. It is noted that the applicant's appeal was filed almost three years after the issuance of the director's decision.

The record contains a Federal Bureau of Investigation (FBI) fingerprint results report, processed by the FBI on October 12, 1999, reflecting the following charge:

On August 11, 1999, the applicant was arrested by the Collier County Sheriff's Office [Florida] and charged with: Charge 001- CRUELTY TOWARD CHILD-ABUSE, Statute/Ordinance FL827-03, a FELONY.

If convicted of a felony charge, the applicant would be rendered ineligible for TPS, pursuant to 8 C.F.R. § 244.4(a). The TPS approval notice was issued subsequent to the FBI report acknowledging that the applicant's record contains felony charge(s), and prior to the request for certified final court dispositions regarding the above charge(s) and any additional arrests.

Due to the outstanding criminal charges at the time TPS was initially approved, and the applicant's failure to submit the requested final court dispositions, the applicant has not met his burden of establishing that he was, in fact, eligible for TPS at the time it was granted. 8 C.F.R. § 244.14(a)(1).

It is noted that the photocopies of the Honduran Driver's License issued on "13-3-98," and the State of Florida Identification Card issued on March 17, 1998, contain darkened and distorted photographs, thereby undermining the ability to conclusively identify the applicant.

This decision constitutes notification of the withdrawal of TPS by the AAO, and notification of the applicant's right to a *de novo* determination of eligibility for TPS in removal or exclusion proceedings. 8 C.F.R. § 244.14(c).

If TPS eligibility is again examined at a later date during removal proceedings, it is noted that the record contains insufficient evidence, during the requisite timeframes, of the applicant's continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: TPS is withdrawn and the appeal is dismissed.