



U.S. Citizenship  
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Services

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FILE:

[REDACTED]

OFFICE: MIAMI

DATE: NOV 28 2005

[SRC 99 258 51574]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

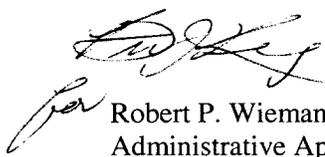
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 office that originally decided your case. Any further inquiry must be made to that office.



Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, 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 seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The district director denied the application because the applicant had failed to establish that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999.

On appeal, counsel submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 term *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 term *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.

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. 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 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).

The record shows that the applicant filed his TPS application on August 20, 1999. On March 13, 2004, the applicant was scheduled to appear at the Miami district office for an interview regarding his TPS application. He was requested to bring with him to the interview proof of continuous residence in the United States since December 30, 1998. The applicant appeared at the interview without the documentation requested. The district director determined that the applicant failed to demonstrate eligibility for TPS and denied the application on June 2, 2004.

On appeal, counsel asserts that the district director denied the application erroneously. He further asserts that the applicant entered the United States on December 1, 1998, and that he stayed at a homeless shelter for illegal immigrants in Brownsville, Texas. Counsel states that the applicant was apprehended by the Border Patrol on July 4, 1999, during a vacation trip to Houston, Texas, with his girlfriend's family, and that he told the Border Patrol that he had been residing in the United States since December 1, 1998; however, the Border Patrol wrote down the date before the apprehension as the entry date.

In a statement, furnished on appeal, the applicant states that at the time of the interview [on March 13, 2004], he "presented an e-mail from Ozanam Center to the immigration officer and an envelope addressed to me as proof that I entered the United States prior to December 30, 1998." It is noted that this "e-mail" written by Sr. Fatima Santiago on March 21, 2004, states, in part, "In 1998 there were lots of people who came from Honduras because of hurricane Mitch, and I am still searching for his records. We need at least two days more to get the information. Can you please give him little more time?" This statement from Ozanam Center is not evidence that the applicant "entered the United States prior to December 30, 1998," as claimed by the applicant.

Counsel submits:

1. A statement dated June 14, 2004, from [REDACTED] indicating that he has known the applicant since December 1997, that he has personal knowledge that he entered the United States on December 1, 1998, because the applicant called him from Brownsville, Texas, and that during that month, he spoke to the applicant several times. He further stated that he has been continuously in touch with the applicant personally and by phone up to the present time.
2. A statement dated March 24, 2004, from [REDACTED] Executive Director, [REDACTED] Brownsville, Texas, indicating that [REDACTED] alias [REDACTED]" was residing in the homeless shelter from December 4, 1998, and stayed there for a maximum of 30 days.

The affidavit from [REDACTED] (No. 1 above) attests to the applicant's continuous residence and entry into the United States on December 1, 1998, based on his "personal knowledge," but fails to provide any specifics regarding the nature, circumstances, or origin of the affiant's acquaintanceship with the applicant. While he failed to indicate the address where the applicant resided during the time of their acquaintance, it is noted that Mr. [REDACTED] listed his own address as [REDACTED] Street, Homestead, Florida, the same address as that of the applicant. However, it is not clear why [REDACTED] stated that he has been continuously in touch with the applicant personally and by phone, if they are, in fact, residing in the same home.

[REDACTED] (No. 2 above) failed to provide any documentation to establish that the applicant was, in fact, the same person as [REDACTED] who resided at the Center in December 1998. Additionally, he failed to indicate how he knew that [REDACTED] and [REDACTED] are one and the same person. Nor did [REDACTED] explain the origin of the information to which he is confirming.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence.

A review of the record of proceeding reveals that that on July 3, 1999, the applicant was apprehended by the Border Patrol at a checkpoint in Sarita, Texas. He was not in possession of any form of identification. The applicant admitted to the officer that he left Honduras on November 5, 1998, he traveled by bus to Mexico where he entered illegally on or about November 15, 1998, and worked in Mexico as a laborer for approximately seven months in order to earn money to finance his trip to the United States. He then traveled by bus and arrived in Matamoros, Tamps., Mexico, on June 1, 1999, and crossed the border into the United States without inspection on June 3, 1999, near Brownsville, Texas. He stated that he was enroute to Houston, Texas, where he planned to work to earn money to finance his trip to Miami, Florida, his final destination.

Form I-213, Record of Deportable/Inadmissible Alien, and Form I-200, Warrant for Arrest of Alien, were issued on July 3, 1999, at Sarita, Texas. In removal proceedings held on September 29, 1999, in Dallas, Texas, the applicant failed to appear at the hearing, and the immigration judge (IJ) ordered the applicant removed *in absentia* from the United States to Honduras. A Warrant of Removal/Deportation, Form I-205, was issued on October 27, 1999. The applicant's attorney filed a motion to reopen the IJ's removal order and to withdraw as representative of the applicant. On August 28, 2000, the IJ granted the motion to withdraw as the applicant's attorney; however, he denied the motion to reopen. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On February 22, 2001, the BIA dismissed the appeal.

The applicant must establish continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The applicant has failed to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. 244.2(b) and (c). The district director's decision to deny the TPS application will be affirmed.

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 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.