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**U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
[SRC 99 258 52872]

OFFICE: NEBRASKA SERVICE CENTER

Date: SEP 29 2005

IN RE: Applicant: [REDACTED]

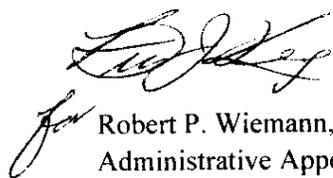
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[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 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 had failed to provide conclusive evidence that he had remained and or arrived in the United States so as to meet the requirements of the registration period.

On appeal, the applicant's representative states that he was provided ineffective assistance of counsel on two separate occasions in regards to his case. The representative also states that because he had limited English skills and no training in immigration matters, he could not ascertain whether he was being served in an accurate manner.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has failed to submit an affidavit in support of his claim, evidence confirming that counsel has been notified of the incompetence claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities. To the extent that the applicant has failed to produce evidence sufficient to substantiate an ineffective assistance of counsel claim, the AAO will review the record applying standard statutory and regulatory eligibility requirements and burdens of proof.

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. 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).

Upon initial submission, the application provided the following documentation:

1. A copy of his Michigan Commercial Drive License expiring on June 17, 2002.
2. Copies of the applicant's Form I-766, Employment Authorization Cards. The first was issued on March 15, 1994 expiring on March 14, 1995 and the second was issued on May 15, 1995 expiring on May 14, 1996.
3. A copy of the applicant's IRS Form W-2, Wage and Tax Statement, from [REDACTED] Inc. in Miami, Florida for 1994.
4. A copy of the applicant's IRS Form 1040, U.S. Individual Income Tax Return, for 1994.
5. A copy of the applicant's Florida automobile policy effective January 12, 1994.
6. A copy of the applicant's automobile identification card issued by a company named Fortune Insurance effective from November 5, 1996 to May 5, 1997.
7. A copy of his Northwest Airlines boarding pass and airline ticket issued on May 17, 1993 for a flight from Los Angeles to Miami.

On September 12, 2002, the applicant was informed that the documentation that he had submitted was not sufficient to warrant favorable consideration of his application. He was requested to submit information concerning his continuous residence from his date of entry to December 30, 1998. The applicant, in response, provided the following additional documentation:

8. A copy of the applicant's IRS Form W-2, Wage and Tax Statement, from [REDACTED] Services of California Inc. in Houston, Texas showing that he earned \$4,266.19 for 1998.
9. A copy of the applicant's IRS Form W-2, Wage and Tax Statement, from [REDACTED] & MFG in Grand Rapids, Michigan showing that he earned \$1,279.80 for 1998.
10. A copy of the applicant's Florida driver's license issued on February 25, 1998.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on January 10, 2003.

On appeal, the applicant reasserts his claim but forwards no additional documentation.

Although the W-2 forms (Items #8 and #9) show that the applicant was employed during 1998, they were not designed to nor do they specify the dates of employment and are of little use in this matter. The applicant has not submitted evidence to establish his qualifying continuous residence or continuous physical presence in the United

States during the period from February 25, 1998 to August 20, 1999, the date his application was filed. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c) (*supra*). Consequently, the director's decision to deny the application for TPS 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 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.