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U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[SRC 04 088 52486]

Office: TEXAS SERVICE CENTER Date: **SEP 30 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 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 because the applicant failed to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant 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 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.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on February 5, 2004.

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).

The director determined that the applicant had failed to establish his continuous residence and continuous physical presence during the requisite periods, and denied the application on June 10, 2004.

On appeal, the applicant states that he has entered the United States legally and returned to Honduras "about 81 times." He states that he was caught entering the United States on May 10, 2001, and that he applied for TPS because Hurricane Mitch destroyed his home and crops. In support of the appeal, the applicant submits photocopies of the following documentation, some of which had previously been entered into the record:

1. A Notice to Appear in Removal Proceedings, issued at Kingsville, Texas, on May 15, 2001, based upon the applicant's apprehension by the United States Border Patrol following his entry without inspection into the United States at or near Brownsville, Texas, on or about May 10, 2001;
2. A Notice of Hearing in Removal Proceedings dated January 17, 2002, indicating that the applicant was scheduled for a Master Calendar hearing in Louisville, Kentucky, on April 18, 2002;
3. A Fingerprint Notification dated June 9, 2004;
4. Pages of the applicant's Honduran passport reflecting United States non-immigrant C1/D, transit and crewman visas, valid from August 3, 1994 to January 2, 1995, and entry stamps dated August 7, 1994 and May 15, 1995, at Miami, Florida, along with a visa for Brazil, and a Honduran exit stamp on May 15, 1995, and re-entry stamp into Honduras on July 1, 1995; and,
5. The applicant's Honduran License issued in Honduras on February 1, 2001.

It is noted that the applicant had also previously submitted his Honduran birth certificate, his fingerprint worksheet, and additional pages of his passport issued on Honduras on "08/06/2000" and reflecting an earlier revalidation on November 25, 1998. In addition, a notation on his birth certificate indicates he married in Honduras on December 18, 1999.

The record also contains a Trial Attorney Worksheet, Memphis, Tennessee, and a Form I-217, Information for Travel Document or Passport.

The evidence indicates that the applicant was not continuously residing and continuously physically present in the United States during the requisite period. Consequently, the director's decision that the applicant failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g). Although the applicant was placed in removal proceedings in May 2001, he has not established that, during the initial registration period, he fell under any of the provisions for late registration (listed above), or filed for TPS within 60 days of the termination or expiration of any of the requisite conditions. Further, the applicant did not submit evidence establishing when his non-immigrant status expired or that he filed for TPS within 60 days of the termination of his non-immigrant status.

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.