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

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FILE:

[SRC 04 004 53115]

Office: TEXAS SERVICE CENTER

Date: **JUN 20 2006**

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:



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, Chief
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 sustained and the application will be approved.

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 and continuous physical presence in the United States during the requisite periods.

On appeal, counsel for the applicant submits a brief 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, 2007, 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).

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 September 27, 2003. The evidence of record contains the Form I-797, CIS receipt notice, reflecting that the applicant's valid nonimmigrant R-2 visa status, as the dependent of a religious worker, had been extended through September 27, 2003. Therefore, the applicant was eligible for late initial registration.

The director determined that the applicant had 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, and denied the application on January 20, 2004. The director noted that the applicant's Form I-821, Application for Temporary Protected Status, indicated his date of entry into the United States as November 16, 2000, and therefore, determined that he had not met the requisite periods for continuous residence and continuous physical presence.

On appeal, counsel for the applicant asserts that the director erred in not considering the applicant's initial date of entry into the United States on October 3, 1998. Counsel states that the November 16, 2000, entry was the result of a brief, casual and innocent departure for a two-week period that does not break the applicant's continuous residence and continuous physical presence in the United States. In support of the appeal, counsel for the applicant submits additional evidence relating to his continuous residence and continuous physical presence in the United States, consisting of: the applicant's Honduran passport, with visa pages, entry and departure stamps, and Form I-94, Arrival and Departure Record, and those for his family; CIS receipt notices for the family's extensions of stay under nonimmigrant R-1 and R-2 visas; Internal Revenue Service (IRS) tax forms for 1999 through 2002, including the applicant as a dependent minor; cancelled checks from November 1998 through December 1999; banks statements, billing statements, receipts and other documents in the name(s) of the applicant's parent(s); and, medical receipts, immunization records, and school reports in the applicant's name, dated between November 1998 and 2003.

The evidence of record reflects that the applicant and members of his family entered the United States on October 3, 1998, in valid nonimmigrant R-2 status. The passports reflect that the applicant, his mother and his sister, returned to Honduras at the end of October 2000, and re-entered the United States on November 16, 2000, on their multiple entry R-2 visas. The trip of approximately two-weeks duration satisfies the criteria of a brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1. The applicant has established his qualifying continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The applicant has, therefore, established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and has overcome the grounds for denial. Consequently, the director's decision will be withdrawn, the appeal sustained, and the application approved.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.