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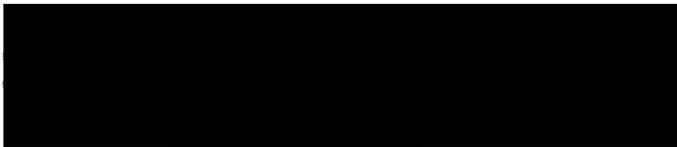
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 05 341 70197]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 06 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:

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 determined that the applicant failed to establish he had: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999. The director, therefore, denied the application.

On appeal, the applicant asserts that he has been in the United States since 1991. The applicant also resubmits evidence previously provided in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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 as 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 term *continuously physically present*, as used 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 term *continuously resided*, as used 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 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 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 September 6, 2006. In support of his application, the applicant submitted the following:

1. A copy of a Certificate of Completion from All Dade Traffic School dated August 13, 1996.
2. A copy of a student record dated September 13, 1996.
3. A copy of a Department of Health & Rehabilitative Student Health Examination dated December 2, 1991.
4. A copy of a Temporary Medical Exemption dated December (day unknown), 1991.
5. A copy of a Form I-20AB, Certificate of Eligibility for Nonimmigrant (F-1) Student Status - for Academic and Language Student issued on September 15, 1992.
6. A copy of a Form I-134, Affidavit of Support dated September 14, 1992.
7. A copy of an undated Form I-539, Application to Extend/Change Nonimmigrant Status.

8. Copies of Form I-797C, Receipt Notices dated August 3, 1992, and January 11, 2005.
9. A copy of a birth certificate with English translation.
10. A copy of a Form I-94, Arrival-Departure Record, issued on November 22, 1991.
11. A copy of a date-stamped envelope dated September 2, 2005.

On March 1, 2006, the applicant was provided the opportunity to submit evidence establishing his nationality and identity, his continuous residence in the United States since December 30, 1998, and his continuous physical presence since January 15, 1999, to the filing date of the application. The applicant, in response, provided:

12. A copy of an Immigration Judge Order dated September 21, 2005.
13. A copy of a response to a status inquiry dated October 28, 2005.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant states that he has resided in the United States since 1991 and was educated here. According to the applicant, he is the child of a TPS-eligible alien and needs TPS in order to continue his education. The evidence presented by the applicant indicates he was present in the United States prior to December 30, 1998. However, the applicant has failed to provide any evidence of his presence in the United States from December 30, 1998 to September 2, 2005.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the director's decision, it is noted that CIS records indicate that the Border Patrol at or near Hidalgo, Texas apprehended the applicant on November 29, 2003. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c)

Beyond the decision of the director, it is noted that the applicant has failed to provide sufficient evidence to establish his nationality and identity. Therefore, the application must be denied for these reasons as well.

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.