

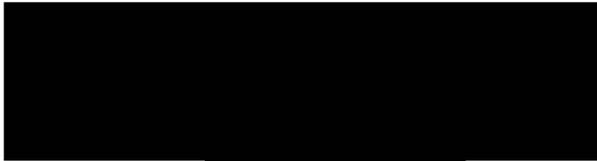
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 06 265 70995]

Office: VERMONT SERVICE CENTER

Date: JAN 24 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, 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 director denied the application because the applicant failed to establish that he had continuously resided in the United States since December 30, 1998; and had been continuously physically present in the United States since January 5, 1999.

On appeal, counsel states that the applicant is eligible for late registration as a child of a TPS registrant, and for humanitarian reasons he should be granted TPS.

Section 244(c) of the Act, and the related regulations in 8 C.P.R. § 244.2, provide that an applicant who is a national of a foreign state 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 CF.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 CP.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 January 5, 2009, 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 CF.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 CPR § 244.9(b).

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on January 30, 2007.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS. The applicant submitted evidence of his mother's presence in the United States, and a copy of his school records covering the 2006 academic year. Counsel states that the child's existence is sufficient to establish eligibility for TPS.

However, the applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite time periods. While regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS as detailed in 8 c.F.R. §§ 244.2(a) through (e).

The applicant stated in his Ponn 1-821, Application for Temporary Protective Status, Part 2, that he last entered the United States on July 8, 2005, and the record of proceeding confirms that statement. The record shows that the applicant (a minor) was apprehended by the United States Border Patrol after illegally entering the United States at or near Eagle Pass, Texas, on July 8, 2005. Since the applicant last entered the United States on July 8, 2005, he cannot show that he has continuously resided in the United States since December 30, 1998, and has continuously been physically present in the United States since January 5, 1999, as required by 8 c.P.R. §§ 244.2(b) and (c).

The record also shows that the applicant was released into the custody of an adult guardian and has subsequently been placed under removal proceedings.

Counsel infers that the applicant acquired "constructive residence" based upon his mother's residence in the United States. However, the applicant must submit sufficient independent evidence to demonstrate that he, not his mother, has continuously resided in the United States since December 30, 1998, and has been continuously physically present in the United States since January 5, 1999. The applicant acquires no derivative status from his mother, nor does "constructive residence" apply under TPS regulations and statute.

Although counsel requests humanitarian relief, claiming the importance of family unity and maternal protection for a child, there are no further humanitarian provisions under the TPS program to provide for such relief. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 c.P.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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.