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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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DATE: **FEB 08 2012**

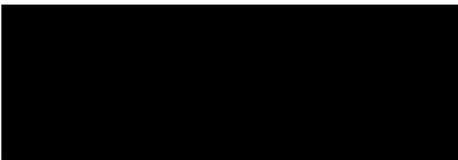
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter 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 was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew TPS 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 acknowledges that the applicant entered the United States on March 3, 1999. Counsel asserts that the applicant is eligible for TPS as both his parents are TPS registrants. Counsel asserts that the director requested thorough information regarding the applicant's eligibility for TPS in 2009 and after an extensive review found the applicant eligible for TPS.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

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 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 Secretary 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 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 term *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. The designation of TPS for Hondurans has been extended several times, with the latest extension valid until July 5, 2013, upon the applicant's re-registration during the requisite time 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 U.S. Citizenship and Immigration Services (USCIS). 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record contains a Form I-213, Record of Deportable Alien/Inadmissible Alien, which indicates that on March 3, 1999, the applicant was apprehended by the U.S. Border Patrol in Brownsville, Texas. The applicant entered the United States without inspection by wading across the Rio Grande River into Brownsville, Texas. The applicant indicated that he was en route to New York to reside with his father. On the same date, a Form I-862, Notice to Appear, was issued and served on the applicant. On August 24, 1999, a removal hearing was held and the applicant was ordered removed

from the United States *in absentia*. On December 3, 1999, a Form I-205, Warrant of Removal/Deportation, was issued. Counsel, in filing a motion to reopen/motion for a stay or removal, certified October 27, 2008, indicated that the applicant had entered the United States on March 3, 1999. On November 21, 2008, the Order of Removal entered *in absentia* on August 24, 1999, was vacated.

The applicant filed his initial TPS application [REDACTED] on September 11, 2000, and was assigned [REDACTED]. On July 26, 2001, the Director, Vermont Service Center, denied the application due to abandonment. No motion was filed from the denial of that application.

The applicant filed his second TPS application [REDACTED] on July 7, 2003. On January 27, 2004, the Director, Vermont Service Center, denied the application because the applicant failed to establish late registration, continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States. No appeal was filed from the denial of that application.

The applicant filed a re-registration application [REDACTED] on January 12, 2005. On September 23, 2005, the Director, California Service Center, denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. No appeal was filed from the denial of that application.

The applicant filed the current TPS application December 30, 2008. On April 20, 2009, the application was approved.

The director determined that based on his entry into the United States on March 3, 1999, the applicant could not demonstrate credible evidence of continuous residence since December 30, 1998 and continuous physical presence since January 5, 1999. The director concluded that the applicant was granted TPS in error. Accordingly, on January 12, 2011, the director withdrew the applicant's TPS.

On appeal, counsel asserts that in response to the Notice of Intent to Deny issued on May 19, 2009, the applicant provided an "air travel ticket evidencing residence in the U.S. prior to March 4, 1999." Counsel's assertion, however, is without merit. The AirTran Airways passenger receipt clearly indicates the applicant traveled on March 4, 1999. Furthermore, the remaining documents submitted are dated subsequent to March 4, 1999.

The AAO does not dispute counsel's argument that the applicant meets the requirement for late registration under 8 C.F.R. § 244.2(iv) as during the initial registration period, he was a child and his parent was a TPS registrant. However, while regulations may allow children of TPS beneficiaries to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. The child is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). As

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<sup>1</sup> The TPS applications and supporting documents have been consolidated into [REDACTED]

stipulated in section 244(c), above, the Secretary designated the dates required to establish continuous residence and continuous physical presence as December 30, 1998 and January 5, 1999, respectively. The applicant, in this case, was not present in the United States during the requisite periods required to establish continuous residence and continuous physical presence.

The applicant arrived in the United States subsequent to the eligibility period. Therefore, he cannot meet the criteria for continuous residence and continuous physical presence in the United States during the requisite periods described in 8 C.F.R. § 244.2(b) and(c). The AAO is not required to approve an application where eligibility has not been demonstrated. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Consequently, the director's decision to withdraw 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.