

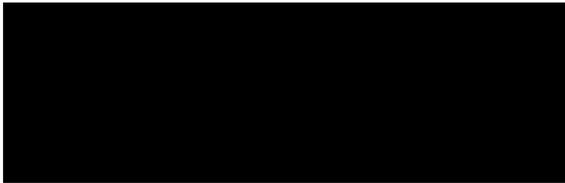
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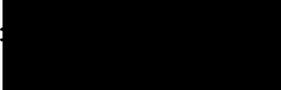
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



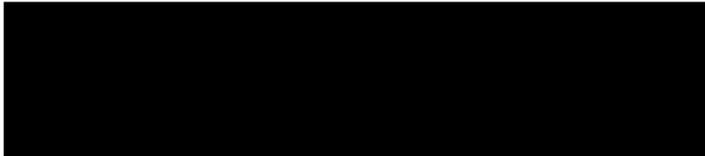
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DATE: **MAR 06 2012** Office: VERMONT SERVICE CENTER FILE: 

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:

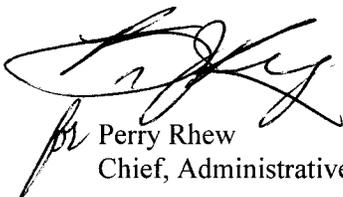


INSTRUCTIONS:

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 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 asserts that the applicant did not intend to abandon his continuous physical presence in the United States or plan not to re-register. Counsel asserts that the applicant departed the United States in 2008 because his mother was gravely ill and that he did not intend to stay past his mother's recuperation, but two months later he learned that his spouse was pregnant and stayed to care for his wife. Counsel states that a withdrawal of TPS and requesting advance parole are neither mandatory nor automatic. Counsel states, "[g]iven the extenuating circumstances, we ask that the Director exercise the discretion built into the statute and accept [the applicant] back into the TPS program."

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if: (1) the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status; (2) the alien has not remained continuously physically present in the United States from the date the alien was first granted TPS; and (3) the alien fails without good cause to register with the Secretary within 30 days before the end of each 12-month period after the granting of TPS. Section 244.14 of the Act, 8 C.F.R. § 244.14(a).

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

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.

USCIS records reflect that on September 22, 2011, the applicant was apprehended by the U.S. Border Patrol at/near Rio Grande, Texas. The applicant indicated that he departed the United States to Honduras on August 30, 2008, and remained there for three years. The applicant indicated that he returned to his native country in order to assist his ailing mother.

Counsel, on appeal, added to the applicant's claim of absence to include that he remained in Honduras to care for his pregnant spouse who gave birth on July 13, 2009.

Counsel's statements on appeal have been noted. However, the term brief, casual and innocent absence, as defined in 8 C.F.R. §244.1(1), means a departure from the United States in which each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence. The applicant intended to care for his mother who was ill, and there was no way to tell how long such an absence might be. Consequently, the applicant should have known that the absence quite possibly might not be a "brief, casual and innocent absence." Furthermore, the applicant's prolonged absence appears to have been a matter of personal choice, as he waited for the birth of his child and then remained in Honduras another two years. The applicant was also aware of the requirements for re-registering as he had previously filed timely re-registration applications subsequent to the approval of his initial application.

The applicant's three-year stay in Honduras interrupted his "continuous physical presence" in the United States. Therefore, the applicant has failed to maintain continuous physical presence in the United States since May 8, 2000,¹ pursuant to 8 C.F.R. § 244.14(a)(2). In addition, the applicant had not established "good cause" for failure to timely re-register. 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.

¹ The applicant was granted TPS on this date.