



U.S. Department of Justice

Immigration and Naturalization Service

MI

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED]

Office: Nebraska Service Center

Date:

AUG 22 2000

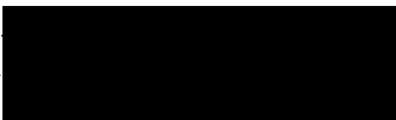
IN RE: Applicant:



APPLICATION:

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

IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who indicated on his application that he had resided in the United States from November 18, 1998. The director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant failed to establish he had resided in the United States since December 30, 1998 and had been continuously physically present in the United States since January 5, 1999. The director determined that the unsupported affidavits were insufficient evidence.

On appeal, counsel states that the applicant has already submitted multiple affidavits from individuals attesting to his presence in the United States. Counsel states that the decision did not mention any of the letters or affidavits and there is no indication that the Service found them lacking in credibility.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244, provide that an applicant who is a national of Honduras is eligible for temporary protected status only if such alien establishes that he or she:

- a. Is a national of a state designated under § 244(b) of the Act;
- b. Has been continuously physically present in the United States since January 5, 1999;
- c. Has continuously resided in the United States since December 30, 1998;
- d. Is admissible as an immigrant;
- e. Is not ineligible under 8 C.F.R. 240.4; and
- f. Pursuant to § 303(b)(1) of IMMACT 90, has timely registered for such status between January 5, 1999 and July 5, 2000.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

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 the Service. 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 contains the following:

(1) Affidavits from [REDACTED] and [REDACTED] sworn to on August 3, 1999 in which they attest that they have known the applicant since November 25, 1998. [REDACTED] attests that the applicant has lived in their home and he appears to be a fine person. [REDACTED] attests that the applicant has lived in their home until now and he has been a good person with them. [REDACTED] lists the address of the home as [REDACTED]

The applicant submitted his application on August 17, 1999 and listed his address as Galveston, Indiana. The envelop in which the applicant mailed the application to the Service is postmarked Kokomo, Indiana. The address provided by the applicant and the statements by [REDACTED] are contradictory.

(2) An affidavit from [REDACTED] dated August 3, 1999 who declares that she has known the applicant since November 25, 1998 in the city of Edinburg, Texas in the home of [REDACTED] (her spelling) [REDACTED] and he appears to be a fine person.

[REDACTED] failed to provide her address for the record.

(3) An affidavit from [REDACTED] who attests on November 2, 1999 that the applicant has continuously resided in the United States from January 1999 to the present. She states that she completed the application and mailed it to the Service Center on August 4, 1999.

Following the receipt of the adverse decision, counsel provides the following:

(4) An affidavit from the applicant's brother, [REDACTED] who is the brother-in-law of [REDACTED] (See 1), in which he attested on April 11, 2000 that the applicant lived with [REDACTED] who supported him for eight months and then began living in Indiana with the brother.

Counsel refers to the determination in Matter of E-M-, 20 I&N Dec. 77 (Comm. 1989), in which the Commissioner discussed the standard "preponderance of the evidence" in conjunction with an application for Temporary Residence on Form I-687 under § 245A of the Act, 8 U.S.C. 1255a. The Commissioner stated that preponderance of the evidence is not evidence that must establish beyond a doubt that an applicant is eligible. The Service can still have doubts but, nevertheless, the applicant can establish eligibility. The Commissioner determined that preponderance of the evidence is not the clear, unequivocal and convincing evidence applicable in deportation proceedings. Preponderance of the evidence requires a lesser showing than these two standards. Counsel then refers to the regulations at 8 C.F.R. 245a.

The present applicant is applying for TPS under § 244 of the Act and the regulations are contained in 8 C.F.R. 244. 8 C.F.R. 244.9(a)(2) reflects that the requirements for evidence of continuous residence are varied and extensive. 8 C.F.R. 244.9(b) provides that the sufficiency of all evidence will be judged according to its relevancy, consistency, credibility and probative value. The Associate Commissioner will adhere to the applicable regulations under 8 C.F.R. 244.

The Commissioner also asserts in E-M-, that the evidence submitted by the applicant can be grouped into three categories. First is the application itself. Second is the documentary evidence the applicant may submit to support the application and to corroborate the information. The third category of evidence is the applicant's oral testimony obtained during an interview. 8 C.F.R. 244.9(a)(1) provides that an applicant for TPS may be interviewed but it is not required. 8 C.F.R. 245a.2(j) states that each applicant for temporary residence must appear for interview. The record fails to contain an interview of the applicant conducted under oath by a Service officer to which would either compliment or detract from the other evidence in the record.

The applicant's affidavits submitted with the initial application and on appeal are primarily from close relatives and are unsupported by probative evidence to establish his entry date in the United States. The record fails to contain a Form G-325 Biographic Information Sheet or a Form I-765 Application for Employment Authorization. The sufficiency of the evidence has not been met. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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 § 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.