



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: Texas Service Center

Date:

AUG 22 2000

IN RE: Applicant: [Redacted]

APPLICATION:

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

IN BEHALF OF APPLICANT: Self-represented

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application was denied by the Director, Texas 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 resided in Honduras until February 1999 and he was admitted to the United States on February 5, 1999 as a nonimmigrant in transit to join a ship as a crewman. 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 been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant states that he entered the United States on January 28, 1998 and had been working in U.S. waters and his residence was Miami, Florida. The applicant states that when Hurricane Mitch hit Honduras he was on the ship and did not know about the hurricane until he arrived in Miami on February 28, 1999. The applicant states that he was informed that his hometown no longer existed.

The record reflects that the applicant last arrived in the United States as a nonimmigrant in transit to join a ship of foreign registry (the Netherlands Antilles) as a crew member. During his temporary stay in Miami, he was housed at the [REDACTED] Motel.

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.

Residence and physical presence in the United States may include such residence and physical presence on a public vessel, if the vessel is a U.S. registry vessel and the crewman is subject to the

jurisdiction of the United States. The applicant was admitted to transit the United States in order to commence employment as a crewman on a foreign registry vessel which is not subject to the jurisdiction of the United States. Therefore the applicant's residence or physical presence on that vessel does not qualify as residence or physical presence in the United States even though the applicant may have worked as a crewman in U.S. territorial waters. As such, he has failed to establish that he has continuously resided in the United States after December 30, 1998 due to his departure from the United States on February 5, 1999 on a foreign registry vessel.

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).

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.