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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: 17 JAN 2002
EAC 99 200 53066

IN RE: Applicant: [redacted]

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

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

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont 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 is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a.

The director determined that the applicant failed to establish that: (1) he has continuously resided in the United States since December 30, 1998; and (2) he has been continuously physically present in the United States since January 5, 1999 to the date the application was filed. The director, therefore, denied the application.

On appeal, the applicant submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 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 resided as used in 8 C.F.R. 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of 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.

The term continuously physically present as used in 8 C.F.R. 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since January 5, 1999. 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 applicant, on appeal, submits one document: an affidavit from Jose Diaz stating that he has known the applicant "for the past six years and that he has been a honorable, honest hard working person who is always willing to give a hand." Mr. Diaz, however, failed to identify himself and to indicate his relationship to the applicant, and whether he has personal knowledge that the applicant was residing in the United States during the six years that he has known him. Nor is this affidavit supported by probative evidence. The affidavit is, therefore, insufficient evidence to establish that the applicant 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 to the date the application was filed.

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). Consequently, the applicant is not eligible for the benefit of temporary protected status.

The burden of proof is upon the applicant to establish that he 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. This decision constitutes a final notice of ineligibility.