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U.S. Department of Justice

Immigration and Naturalization Service

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



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FILE: [Redacted]
WAC 99 195 52899

Office: California Service Center

Date: MAY 7 2001

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The case will be remanded to the director for further consideration and action.

The applicant is a national 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 submit evidence of her national identity as had been requested. The director, therefore, denied the application.

On appeal, the applicant states that all the required documentation requested were originally submitted with her application. She further states that she did not receive the September 15, 1999 letter mentioned in the director's letter.¹ She indicates that she has moved and that she notified the Service of her move. 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 of a state designated under section 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 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; or

¹ This letter refers to the director's Notice of Decision regarding Form I-765, Application for Employment. Although the director denied the Form I-765 because the applicant failed to submit additional evidence as had been requested, it is noted that the director failed to list the evidence the applicant was requested to submit.

(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 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 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.

8 C.F.R. 244.9(c) states, in part:

Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

The applicant was requested on February 26, 2000 to submit evidence of her identity, such as, a copy of all pages of her passport; a copy of her foreign birth certificate with English translation accompanied by other photo identification, such as, driver's license or school ID card; or a copy of a national identity document from her country of origin bearing her photo and/or fingerprint.

On appeal, the applicant submits a copy of her identity certificate issued by the Consul General of Honduras in Los Angeles, California, on July 22, 1999, establishing that she is a national of Honduras. It is, therefore, concluded that the applicant has overcome this finding of the director.

The record of proceeding, however, contains insufficient evidence to establish that the applicant has continuously resided in the United States since December 30, 1998, and that she has been continuously physically present in the United States since January 5, 1999. Further, there is no evidence in the record that she was requested to submit additional documentation to establish residence in the United States during this period.

Therefore, the case will be remanded in order that the director may accord the applicant an opportunity to submit additional evidence. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.