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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



Public Copy

FILE: 
WAC 99 214 50877

Office: California Service Center

Date: MAY 7 2001

IN RE: Applicant: 

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

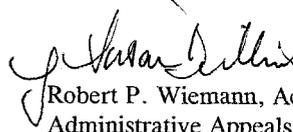
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, claiming to be a national of Honduras, 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 record reflects the applicant is a national of Guatemala and that country has not been designated under section 244 of the Act. The director, therefore, denied the application.

On appeal, the applicant states that she has previously furnished proof that she is a national of Honduras and not a national of Guatemala as stated by the director. 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
 - (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(a)(1) provides, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:

(i) Passport;

(ii) Birth certificate accompanied by photo identification; and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The Service record reflects that on June 6, 1981, at the age of 8 years, the applicant (under the name of [REDACTED] together with her mother [REDACTED] and father [REDACTED], were apprehended by the Service subsequent to their entry to the United States without inspection near San Ysidro, California. His father and mother both claimed that they are natives and citizens of Guatemala, including the applicant.

The applicant is now claiming to be a national of Honduras. As evidence, she submits a Honduran birth certificate which shows that she was born on June 6, 1981 at Distrito Centro, Fco. Morazan Honduras, CA., to [REDACTED] and [REDACTED]

On appeal, the applicant submits a declaration from [REDACTED] stating that the applicant is his stepdaughter, that she was born in Honduras on June 6, 1981, that he was present at the applicant's birth because he is married to the applicant's mother, he has assisted her economically and morally, and that he is still married to her mother and they all reside as a family in the same household. The applicant also submits a copy of her identity certificate issued by the Consul General of Honduras in Los Angeles, California, on January 18, 2000, as evidence that she is a national of Honduras.

The case will, therefore, be remanded in order that the director may request the applicant to appear for a personal interview pursuant to 8 C.F.R. 244.9(a)(1), to determine the applicant's identity, and to establish the authenticity of the applicant's birth certificate and identity certificate furnished by the applicant. It is also noted that the record of proceeding 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. Because there is no evidence in the record that the applicant was requested to submit additional documentation to establish residence in the United States during this period, the director may also 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.