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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: 

Office: California Service Center

Date:

**MAY 10 2001**

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: Self-represented

**identification 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 appeal will be rejected, and the matter will be remanded for further action.

The applicant is a native and citizen of Honduras who indicated on her application that she entered the United States on August 25, 1995. 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, due to abandonment pursuant to 8 C.F.R. 244.9(c) because the applicant failed to submit the requested documentation.

On appeal, the applicant states that she is enclosing certain documents and she did not receive the prior requests. The applicant also states that she informed the Service of her new address in May 2000.

The record contain a letter from the Service dated February 28, 2000, in which the Service requested the applicant to submit the following item of identity; (1) a copy of all pages of her passport, or (2) a copy of her foreign birth certificate with English translation, accompanied by other photo identification, or (3) any national identity document from her country of origin.

Upon review of the record, the Associate Commissioner finds that it contains a copy of her foreign birth certificate with English translation, accompanied by a photo identification "Carnet de Identificacion" showing that she was registered as a student in January 1995.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244.2, 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 under § 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:

(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 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).

8 C.F.R. 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. 103.5.

There is no appeal of the director's decision in the present matter, and the appeal will be rejected. The applicant has already submitted the additional evidence for the record. Therefore, the matter will be remanded to the director to reopen the matter on a Service motion, and to adjudicate the application supported by all of the documentation.

**ORDER:** The appeal is rejected. The matter is remanded to the director for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.