M1

PUBLIC COPY

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

[redacted]

FILE: LIN 00 237 51090 [redacted] Office: Nebraska Service Center Date: MAY 31 2002

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

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

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

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 submit additional evidence as had been requested. The director, therefore, denied the application due to abandonment.

On appeal, the applicant's mother states that she had previously submitted evidence but it was returned. She again submits additional evidence.

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 was requested on February 22, 2000 to submit a photo ID, proof of entry since December 30, 1998, and proof that she has continuously resided in the United States since January 5, 1999. On appeal, the applicant submits additional evidence.

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.

The director denied the application due to abandonment. An appeal was subsequently filed by the applicant. However, there is no appeal of the director's decision in the present case. The appeal will, therefore, be rejected. The applicant, however, has submitted additional evidence for the record. Therefore, the case 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 case is remanded for appropriate action consistent with the above discussion.