



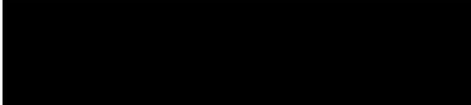
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U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: [Redacted]
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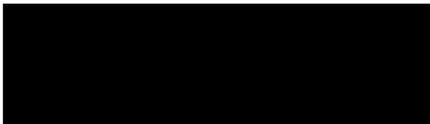
Office: California Service Center

Date: 18 SEP 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:



PUBLIC COPY

INSTRUCTIONS:

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

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, 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 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 pursuant to 8 C.F.R. 244.9(c).

On appeal, counsel asserts that the applicant was receiving medical treatment and medication for neurological disorder, and due to her unstable condition, she was unable to submit the required documentation. Counsel submits additional documentation.

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.

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.

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 August 24, 2000 to submit evidence of her nationality and proof of her residence in the United States. The director listed examples of evidence she may submit to establish eligibility. Because the applicant failed to comply, the director denied the application.

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 pursuant to 8 C.F.R. 244.9(c). 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. 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 appeal is rejected. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.