

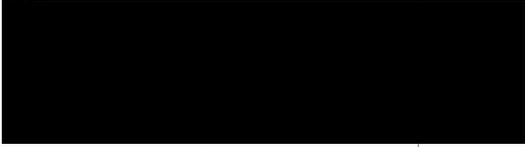
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



FILE:

Office: Texas Service Center

Date:

DEC 15 2003

IN RE: Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act,
8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 all of the evidence requested to establish that: (1) she has continuously resided in the United States since December 30, 1998; (2) she has been continuously physically present in the United States since January 5, 1999 to the date the application was filed; and (2) she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant states that she has been in the United States since August 1993. She claims that in 1999, her husband and her older daughter received employment authorization, and that her name was included on her husband's application. The applicant submits additional documentation establishing her continuous residence and physical presence in the United States during the qualifying period.

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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of 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 a 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 record reflects that the applicant last entered the United States with a B-2 nonimmigrant visa on July 31, 1993, and was authorized to remain in the United States until January 30, 1994. The applicant filed her TPS application on June 17, 2002. In a notice of intent to deny dated June 28, 2002, the applicant was requested to submit: (1) a copy of her original birth certificate with a certified English translation; (2) evidence to show that she has continuously resided in the United States since December 30, 1998; (3) evidence to show that she has been continuously physically present since January 5, 1999 to the date of filing her application; and (4) evidence to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999.

The director noted that the applicant, in response, submitted additional documentation, including her birth certificate. However, no evidence was furnished to establish her residence in the United States since December 30, 1998. She further noted that insufficient evidence was furnished to establish continuous physical presence from January 5, 1999 to the date of filing her application, and that she lacked evidence for the years 1999, 2000, 2001, and 2002. The director also noted that the applicant failed to submit evidence to establish eligibility for filing after the initial registration period from January 5, 1999 to August 20, 1999.

On appeal, the applicant submits several documents to establish that she resided in the United States since prior to December 30, 1998. She also submits documents to establish physical presence for the years 1998, 1999, 2000, and 2002. The applicant submits

two documents dated January 1, 2001 and January 2, 2001. This documentation is insufficient to establish the applicant's continuous physical presence during the year 2001. The applicant has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b).

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reflects that the applicant filed her TPS application on July 17, 2002. The applicant claims on appeal that her husband was approved employment authorization and that her name was included in his application.

Spouses and children (of aliens who applied for TPS under the initial designation) who did not initially apply for TPS although they are independently eligible for TPS, qualify for late registration if they are physically present in the United States and have resided in the United States prior to December 30, 1998. Furthermore, the applicant must provide evidence that, at the time of the initial registration period of January 5, 1999 through August 20, 1999, he or she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

The record reflects that the director, in her notice of intent to deny dated June 28, 2002, and in her notice of decision to deny dated August 6, 2002, listed the criteria required to establish eligibility for filing after the initial registration period from January 5, 1999 to August 20, 1999. One of the criteria listed by the director was for the applicant to "provide proof: birth certificate, marriage certificate, divorce decree, court order, etc." if she is the spouse of an alien currently eligible to be a TPS registrant.

The applicant, in this case, has not provided evidence to establish that her husband was a TPS recipient or that she was applying as the spouse of an alien currently eligible to be a TPS registrant. Nor did the applicant submit her husband's birth certificate, their marriage certificate, divorce decree or court order (if applicable).

The applicant has failed to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).



The burden of proof is upon the applicant to establish that she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.