



U.S. Citizenship  
and Immigration  
Services

M

[REDACTED]

FILE:

Office: TEXAS SERVICE CENTER

Date: AUG 31 2004

IN RE:

Applicant:

[REDACTED]

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**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 applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish that she had: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999. The director also found that the applicant entered the United States after the dates recognized for entry for Honduran TPS applicants.

On appeal, the applicant provides a statement and additional evidence.

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 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 phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. 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 phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. 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 phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

In support of her initial application, the applicant submitted the following documentation:

1. A birth certificate with English translation;
2. A Lee High School Secondary Report Card dated August 20, 2002;
3. A State of Texas Academic Achievement Record dated in the year 2001;
4. An immunization record;
5. A U.S. Army, JROTC, Cadet Challenge Certificate dated May 20, 2003; and,

6. The applicant's mother's social security card and Employment Authorization Card valid from October 31, 2002 to July 5, 2003.

The record of proceedings also contains documentation relating to the applicant's apprehension upon entering the United States with her mother, and the subsequent removal proceedings. This documentation indicates that the applicant, accompanied by her mother, was apprehended on April 4, 1999, near Brownsville, Texas, while entering the United States on foot. An Order to Show Cause placing the applicant in removal proceedings was served on the applicant's mother because the applicant was a minor, 12-years of age. On July 28, 1999, the Immigration Judge ordered the applicant, in absentia, to be removed to Honduras and found her failure to appear and proceed with applications for relief from removal to constitute abandonment of any pending applications and of those that the applicant may have been eligible to file. The District Director, Harlingen, Texas, on August 9, 1999, issued a Warrant of Removal/Deportation. The applicant was scheduled to depart via commercial airline on September 9, 1999, but failed to appear for removal. It is noted that the Certified/Return Receipt envelope containing the warrant and departure information was returned as "Unclaimed."

The director determined that the evidence of record indicated that the applicant had not entered the United States until April 1999, and thus the applicant could not meet the required timeframe for continuous residence and continuous physical presence in the United States. Therefore, the director denied the application for these reasons on August 28, 2003.

On appeal, the applicant states that she is a child of a TPS registrant and is, therefore, eligible to apply for late registration at any time. On appeal the applicant also resubmits photocopies of her birth certificate and her mother's social security card, Employment Authorization Card (EAD) indicating her mother was approved for temporary benefits under category C19 with a pending TPS case, and newly submits a photocopy of her mother's State of Texas Identification Card, with expiration date of May 18, 2008.

While in cases where all the regulatory requirements of 8 C.F.R. § 244.2 are fully met, a child of a TPS registrant may qualify for late registration, these are not the material issues for the instant case. In this case, the applicant has not submitted any evidence to establish her qualifying continuous residence or continuous physical presence in the United States for the dates specified by the Attorney General for Honduras, in order to receive TPS benefits. The evidence of record indicates that the applicant entered the United States in April 1999, more than three months after she would have been required to establish continuous residence and continuous physical presence in the United States. She has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish her eligibility for late registration. The application must also be denied for this reason.

Although not addressed by the director, the Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects that the applicant was arrested on October 26, 2002, in Houston, Texas, on a Theft charge. However, the arrest report and the final court disposition of the above arrest are not included in the record of proceeding. **CIS must address this arrest and/or conviction in any future decisions or proceedings.**

An alien applying for temporary protected status has the burden of proving that he or 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.