

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
disclosure of personal privacy

[Redacted]

*[Handwritten signature]*

DEC 17 2004

FILE: [Redacted]

Office: Vermont Service Center Date:

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:  
[Redacted]

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.

*[Handwritten signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont 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. § 1254.

The director denied the application because the applicant failed to establish that she had been continuously physically present in the United States since January 5, 1999.

On appeal, counsel submits a brief and additional documentation.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2006, 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).

On November 26, 2002, the applicant was requested to submit evidence establishing her continuous residence since December 30, 1998, and physical presence since January 15, 1999, in the United States. In response, counsel, citing *Rosario v. INS*, 962 F. 2d 220 (2<sup>nd</sup> Cir 1992), asserted that the applicant's residence in the United States had been established, based on her mother's continuous residence in the United States. The director

determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on April 25, 2003.

On appeal, counsel reiterates that the applicant is a child of an alien eligible for TPS. Counsel also asserts that the applicant is eligible for TPS because she had been afforded benefits by the Executive Office of Immigration Review. Counsel submits the following documentation:

1. A copy of a Notice of Hearing in Removal Proceedings dated March 8, 2002;
2. A copy of an Employment Authorization Card for the applicant's mother with an expiration date of July 5, 2002;
3. A copy of a Social Security Card for the applicant's mother;
4. A copy of the applicant's birth certificate with English translation; and,
5. A copy of the applicant's passport from Honduras.

Counsel asserts that the applicant was "afforded benefits of Temporary Protected Status through the Executive Office of Immigration Review." The record reflects that the applicant submitted her Form I-821, Application for TPS, to the Immigration and Naturalization Service, now Citizenship and Immigration Service (CIS) on March 11, 2002. At the applicant's removal hearing before the Executive Office of Immigration Review on August 16, 2002, the Immigration Judge ordered, based on the joint request by both parties, that the case be administratively closed, noting that the applicant had applied for TPS. The TPS application was subsequently denied by the director, Vermont Service Center, on April 25, 2003, because the applicant had not established that she had met the continuous physical presence requirements for TPS.

Counsel also reiterates that the applicant is eligible for TPS because her mother had been granted TPS. However, while regulations may allow children of TPS beneficiaries to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. Counsel previously cited *Rosario v. INS*, and asserted that the applicant's residence in the United States has been established, based on her mother's continuous residence in the United States. The alien, in *Rosario v. INS*, was applying for relief from deportation based on his parent's unrelinquished domicile of seven consecutive years. However, the applicant, in this case, is applying for TPS benefits. Pursuant to Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, an alien who is a national of a designated state is eligible for temporary protected status only if such alien establishes that he or she has met the continuous residence and continuous physical presence criteria for TPS.

By her own admission, the applicant arrived in the United States on August 22, 2001, subsequent to the eligibility period for Hondurans. Therefore, she cannot satisfy the continuous physical requirements described in 8 C.F.R. § 244.2(b). Therefore, the director's decision that the applicant had not established her continuous physical presence in the United States during the requisite period will be affirmed.

Beyond the decision of the director, as the applicant did not arrive in the United States until August 22, 2001, she cannot satisfy the continuous residence requirements described in 8 C.F.R. § 244.2(c). Therefore, the application for TPS must also be denied on this ground.

An alien applying for TPS 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.