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

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JUL 01 2004

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

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 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 for

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a 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 her entry into the United States prior to December 30, 1998, and her qualifying residence and physical presence in the United States during the requisite periods.

On appeal, the applicant provides a brief statement.

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 is eligible for temporary protected status only if such alien establishes that he or she:

- (a) is a national of a 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 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, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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 conditions described in paragraph (f)(2) of this section.

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.

The issues raised by the director to be addressed in this proceeding are whether the applicant has established her entry into the United States prior to December 30, 1998, her continuous residence in the United States since December 30, 1998, and her physical presence in the United States since January 5, 1999. The applicant must also have been in the United States during the requisite timeframe and otherwise satisfy the requirements under 8 C.F.R. § 244.2, as stated above.

The applicant was requested on July 23, 2003, to submit evidence establishing: her entry into the United States prior to December 30, 1998; her continuous residence in the United States since December 30, 1998; and, her physical presence in the United States since January 5, 1999. The applicant, in response, provided three pay stubs dated December 15, 1998, January 13, 1999, and April 6, 1999. The applicant also provided

an affidavit, dated September 10, 2000, from [REDACTED] stating that the applicant attended "our services & programs from January 1999 to July 2000."

The director determined that the applicant had not established entry into the United States prior to December 30, 1998, and had provided insufficient evidence to establish that she was continuously residing in the United States since December 30, 1998, and that she was continuously physically present in the United States since January 5, 1999. In addition, the director found that the three pay stubs submitted by the applicant were questionable, as there were numerous inconsistencies and errors.

On appeal, the applicant states that she came to the United States on July 4, 1998. The applicant also states that she meets two of the conditions for late registration.

The applicant provided a letter dated February 20, 1999, from the assistant manager of Pan-American Bookstore stating that the "10 Bibles" ordered by the applicant "are now in our store You can pick up them anytime." The applicant also provided a pay stub for the period ending November 10, 1998, from [REDACTED] showing a net pay of \$51.33. It is noted that the pay stub shows a different social security number than the pay stubs previously presented. Further, the pay stub showing that the pay period ended on November 10, 1998, raises questions as to why the applicant did not present this document previously as evidence of her entry into the United States prior to December 30, 1998. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*, 582, 591.

The additional evidence presented on appeal is not sufficient credible evidence to establish that the applicant entered the United States prior to December 30, 1998, and has been continuously residing and continuously physically present in the United States during the required timeframes. The applicant has failed to establish that she has met the criteria described in 8 C.R.R. § 244.2(b) and (c). For these reasons, the application may not be approved.

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.