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

*Me*



FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 10 2004

IN RE: Applicant

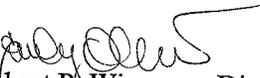


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

*for*   
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 determined that the applicant failed to establish 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, therefore, denied the application.

On appeal, the applicant states that she received the director's decision, which she does not understand. The applicant also provides 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 as 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 conditions described in paragraph (f)(2) of this section.

The term *continuously physically present*, as used in 8 C.F.R. § 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by CIS, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

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.

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 January 5, 2005, upon the applicant's re-registration during the requisite period.

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

On December 20, 2002, the applicant was provided the opportunity to submit evidence establishing her residence since December 30, 1998, and physical presence since January 15, 1999, in the United States. The applicant, in response, provided one statement from [REDACTED]. According to Mr. [REDACTED] he has known the applicant since December 1998. The director determined that the applicant had not established her continuous residence and presence in the United States and, therefore, denied the application.

On appeal, the applicant states that she does not understand the denial letter she received. The applicant requests that her case be reconsidered. The applicant also provided photocopies of two statements from Empire Stat Med Review, P.C., a photocopy of an envelope, and a statement from [REDACTED].

The statements from [REDACTED] are unsigned and dated November 7, 1998 and January 10, 1999. The statements indicate that the applicant was seen and examined on the two respective dates. However, according to the letterhead, the company is located in Ft. Lauderdale, Florida. This raises the question as to why the applicant, who purportedly lived in New York, would visit a medical practice so far way from home. This reduces the plausibility of the claim. In regards to the envelope, it appears to be stamped with the date of December 24, 1998. However, there is nothing to indicate that the letter was ever actually sent. Further, even if accepted as probative, it does not establish the applicant's continuous residence since January 5, 1999.

In her statement, Ms. [REDACTED] claims that she has known the applicant since December 1998. The statements from Ms. [REDACTED] and Mr. [REDACTED] regarding the applicant's claimed presence in the United States before December 30, 1998 are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence. The applicant has, therefore, failed to establish that she has met the residence and physical presence requirements 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. Evidence in the record indicates that the applicant was a minor child at the time her father had been granted TPS. While regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. However, the applicant remains ineligible for TPS because she failed to meet the qualifying continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c). As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

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.